

A Vade Mecum L.

OR

W-26-46

T A B L E

Containing the Substance

of Such

STATUTES

Wherein

Any one or more JUSTICES of
the Peace are inabled to deale in,
at the Sessions of the peace.

Together with an Epitome of Master
Stansfords plea's of the Crowne.

Justitia est basis, & fundamentum Rei publicæ.

By W. A. YOUNG. Esquier.

LONDON,

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A Table, &c.

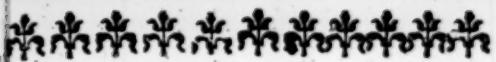
Weights 11, H: 7, 12, H, 7	Woods 31, H: 8, 17, 33
5: 19, H: 7, 8	Woode 23, Eliz: 9.
Wills 21, H: 8, 3	Women 7, Iacob 7.
Wines 7, Ed: 6, 3, 5, Eliz.	W. bill 7, Iacob 6.
5, 1: R: 3, 13	Two wives 1, Iacob 11
Witness 5, Eliz: 9	Ya-ne 7, Iacob 7.
Witchcraft, 1, Iacob 12	Ydlenesse 4, H, 7, 12.
Women, taken, &c. 3, H, 7, 2	Yssues lost, 27, Eliz: 1
	Yssue generall, 21, Iacob

FINIS.

It is ordered by the Committee of the House of Commons concerning Printing, that this booke intituled A Vade Mecum, and Cornu Copia: be forthwith Printed for the publike good.

Maii 26. 1642.

John White.



To the Reader.

THis Table being above 15. yeares
since drawne out of such statutes
as concerne the power of one or more
Justices of peace, out of the Quarter
Sessions, was then intended only for
an helpe to the memory. A copie
whereof comming into some un-
known hand, is lately printed at *Cam-*
bridge, wherein are so many faults, ei-
ther by the negligence of the Tran-
scriber, or carelesnesse of the Printer,
that it was thought requisite to correct
the same.

The use of it is thus. First, it sets
downe the power of one Justice of
Peace alone by himselfe, without any
other to joyne with him. 2. The po-
wer of two Justices of Peace, &c. In
both which you have, First the Of-
B fence

To the Reader.


fence : 2. The Statute against which the offence is committed : 3. What conviction is requisite, whether upon view, or by one or two witnesses, or by Jury : 4. In the other Column is set downe the punishment to be inflicted for that offence.

& Note that where you finde the Character in the margent set after any Statute, it sheweth you, that that Statute doth stand upon continuance, but if you find a line drawne through it, as in this second figure 8, it noteth that such a Statute is now either expired or repealed. Lastly, you have many blanks left for the adding of such other things as are omitted, or may hereafter by any new statute committed to the care of the Justice of Peace.

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The Precognita.

1.  *Ne Iustice of Peace alone cannot take any inquisition unlesse power bee given unto him by Statute, M.7 Ed. 4 fol. 18.*

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2. *Where the matter is to be tryed by Witnesses, it seemeth that two Witnesses are requisite. Otherwise, it is where the tryall is by Iury of twelve, for there one Witnesse sufficeth: yea, there many times Witnesses are not necessary, Plod. Com. fol. 12 a*

The
3. *In all cases where the offence is found upon inquirie, those Iustices have authoritie to make out Pro. es against the offenders, untill they have paid the fine, and then to deliver them upon payment of it, or upon Sureties given for*
B 2 it.

The Præcognita.

it. Otherwise the Iustices may receive the traverses of the Offenders, Dalt. 127. But this must be understood in such cases, whereof they have power to hear and determine, and not upon inquiry only, Stat. 1. Eliz. 23. Eliz. &c.

4. The tryall by examination of Offenders or Witnesses, is not permitted unto Iustices, but only in case where either the Statutes doe generally referre the tryall to their discretions, or doe specially authorise them to take examinations, Dalt. pag. 20. 126.

5. In all cases where the Iustices of Peace may hear and determine, or punish Offenders by their owne confession, or by the Witnesses, there the Iustices of Peace may grant out their Warrants against the Offenders, and may thereupon proceed to determine the offence, Dalt. 128.

6. A Iustice of Peace cannot bind over an Offender against a Penall Law to answer his fault, Lamb. 187. But he must first be Indicted, Lamb. 188. Stat. 1. Ed. 6. 1. Accords.

7. A

The Præcognita.

7. An Infant is bound by every
Statute Law, if he be not excepted in the
Statute, Dyer 104. p 13. And so are
Women covert, Cook lib. 11. fol. 61. b.
53. b. Dr. Follers Case, Sed quære
of Bro. title Imprisonm. contra.

8. Wheresoever a Justice of Peace
hath power given him by any Statute to
bind over any man, or to cause a man to
doe any thing (if such person being in
his presence) shall refuse to be bound or
to doe such a thing, it seemeth such Ju-
stice may send such a person to the Goale,
there to remaine untill he shall performe
the same, Dalt. 297.

9. Where some Statutes doe inable
Justices of Peace to heare and determine
by the generall word Examination, with-
out shewing of what persons it seemeth
that they may examine the Parties as o-
ther Witnesses, Lamb. 535. 536. And
these examinations ought alwayes to be
upon oath, because the tryall thereof de-
pendeth upon them, Lamb. pag. 536.

10. If in any Statute, it be spoken of
Prooffe

The Præcognita.

prooffe generally, albeit there be many son
proofes in Law, yet it shall be understood ei
of the best prooffe, that is by Jury, Cooke
lib. 6. fol. 20. in Gregories Case.

11. This word King, doth include Pe
all his successors, because the King can Wh
not dye in respect of his politick capacitie th
Cooke lib. 6. ol. 27. in the case of Soult. for
diers. B. 1 see Stat. 1. Mar. Parliam. 2. the
cap. 9. it hath beene doubted no
lio.

12. All the Articles Within the com
mission of the Peace are both inquirable,
and determinable at any speciall Sessions
of the peace, Lamb. 623. And also all
such Statutes as use the word Sessions
indifferently, without adding Generall,
or Speciall. Lamb. 624.

13. By Stat. 2. H. 5. cap. 4. Justi
ces of the Peace, may if they see cause,
keepe more then foure Sessions yearely,
Lamb. 623

14. Note that the Statute of 4. H. 7.
12. 33. H. 8. 10. 37. H. 8. 17. with
the annexed Proclamation, doe give fur
ther power unto Iustices of the Peace, in
some

The Præcognita.

many some cases, then you shall find expressed,
stood either in their Commission, or the parti-
book cular Statutes themselves.

15. Note also, that Iustices of the
clude Peace, may inquire of such Tre'passes,
can Whereupon any may have an action upon
citi the Case, for the Tres'passe or Deceit:
ionl for in the end of an Action upon the case,
n. 2 these words be rehear'ed, Contra pacem
om nostram, Fi. z. justice of the peace, fo-
ble lio. 12, b.

B 4

Inkeepers

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Offences. | One Justice. | Penalties. I

Inkeepers, Alehouse-keepers, or Victuallers, selling lesse then one quart for a penny.

Stat. 1 *Iacob. 9.*

21 *Iac. 7.*

One Witnesse view or confession.

And after confession by the Delinquent, his oath may convict others.

21 *Iac. 7.*

2 Innkeepers, Alehouse-keepers, or Victuallers, suffering any of the same Parish to continue tipling in their houses.

Stat. 1 *Iac. 9.*

21 *Iac. 7.*

One Witnesse or view.

3 If any Inkeeper, Alehousekeeper Victualler, or Taverner, suffer any, wheresoever his habitation be, to continue tipling in his house.

1 *Iac. 9.*

21 *Iac. 7.*

1 *Car. 4.*

Twenty shillings to be levied by distresse, and sale after six dayes, and for want of distresse, to be committed untill payment.

And disabled for three years for keeping any Alehouse, by 21. *Iac. cap. 7.*

If the Constable or Churchwarden doe not levie the Penaltie, or shall not certifie the want of distresse within twenty dayes, he forfeits forty shillings, to be levied by distresse, and sale, *ut supra.*

Alehouses

Ten shillings to be levied by distresse, *ut supra.*

And disabled, *ut supra.*

Constable &c. punished *ut supra.*

Ten shillings to be levied by distresse, and for want of satisfaction, in six dayes, to be sold, restoring the overplus, and for want of distresse to be committed till payment.

And disabled, *ut supra.*

21 *Iac. 7.*

Note

Offences. | One Justice. | Penalties. Off

Two Witnesses or view.

Drunk.

4 If any bee convicted
for being drunk,

4 *Iac. 5*

21 *Iac. 7*

One Winesse or view.

If any Alehouse keeper
be convicted of drunken-
nesse, he is disabled for
yeares to keepe any Ale
house.

21 *Iac. 7.*

This conviction of drun-
kennesse must be within 6.
moneths of this offence.

4 *Iacob. 5.*

Tipling

5 Townesmen, or others
which shall remain tipling
in any Inne, Alehouse, or
Viduallling house,

4 *Iac. 5*

21 *Iac. 7.* to tipling.

One Winesse or view.

Flash.

6 Finding any flesh to
be dressed or killed in any
common viduallling house

Note, No man may time
strain in the highway, & si
Mailb. Anno 25. H. 5. c. 5.

First, to pay five shilling
to the Churchwarden
where, &c. within 7 or 8
weeke after conviction, & si
elic to be levied by distre
and sale, and for want
distresse, to sit in Stocks
houres.

2 To be bound with
sureties in ten pound to
of good behaviour.

If the Constable levie
not, he forfeits ten shilling
to the poore, to bee lev
ut supra.

Three shillings for coll)
pence to bee levied by vic
stresse, after one week
neglect of payment, or hol
sit in Stocks foure houres

And the Alehousekeep
disabled 3. yeares, by By e

21 *Iac. 7.* any

Constables neglect, forfe
ten shillings.

To seize it, and to g
it to the poore.

may time of Lent.
 way, *5 li. 5.* 1 *Iac.* 29. 8
4 s. 6. *5 li. 7.* 3 *Carol.* 4.
 Vpon view.

Phillip
 ward
 in 9 Offenders in case of
 tion, forcible entries,
 diffre 5 *Ri.* 2 cap. 7
 want
 stocks 15 *Ri.* 2 cap. 2
 8 *H* 6 cap. 9
 with 31 *Eli.* cap. 11
 d to 21 *Iac.* cap. 15.
 M. 21 *H* 6 fol. 5
 levie Vpon view only.

8 Make restitution of
 possession unto tenants for
 tares (copie of Court
 of roll) Gardians by Knights
 by vice, Statute Marchant,
 weckle or Tenants by them,
 or holden in case of fo ci
 our entries,
 keep 21 *Iac.* 15
 by By enquire only, not els
 .7. any case.
 forfi

9 Enquire of the defaults
 of Sheriffes, in not return-
 ing sufficient Inrois, to
 enquire of forcible entries.

Imprisonment, fine, and
 to remove the force, and
 upon pledges found for the
 fine to deliver them.

But hee cannot make re-
 stitution without inquiry,
Dolt. 44 45.

FORCE.

In this case of restitution
 he may not upon the en-
 quiry fine or commit
 them,

But he cannot make re-
 stitution without enquire,
Dolt. 44 45.

Restituⁿ.

Fine twenty pound.

8 H. 6

4 Offences. | One Justice. | Penalties

8 H. 6. 9.
By Indictment.

Games 10 Keepers of playhouses, and of unlawfull games.

33. H. 8. 9

Vpon view.

Stat. 12. Ri. 2. 6. Kailes.

11 H. 4. 4 Handball, Football, Dice, Coits, bowling,

17 Ed. 3. 4 hand in, hand out, Dice, Tenice, clashe, quickboard, *W. H.* Presidents, 1. part fol. 85. saith that all games except shooting are unlawfull.

11 Such as shall play in such houses,

33 H. 8. 9.

Vpon view.

12 Such as out of Christmas shall play at unlawfull games any where.

33 H. 8. 9.

Imprisonment untill become bound by Recognizance to keepe no more

The penalties of the former statutes are only repealed by 33. H. 8. 9.

Imprisonment untill become bound by Recognizance to play no more and to pay six shilling eight pence, to bee received in Quarter Session

31. Eli. 2.

Imprisonment and by obligation to the wife to play no more,

Paine twenty shilling Indictment in the

Fin

inding or knowing the

Sessions

31 Eliç. 5

3. Such as meet or assemble out of their owne
y Reist upon the Lords day
no many sports, or any pastimes
whatsoever.

only such as use Bearebait.
8.9. or Bulbayting, or any
er unlawfull exercise or
time in their owne pa-
upon the Lords day,

1 Car. 1 8

One witness, view, or
session,

Three shillings foure
pence to the poore, where
to bee levied by dis-
tresse and sale, restoring
the overplus, &c. and for
want of distresse to sit in
Stockes three houres,

To be questioned within
one moneth.

W. B: Presidents, 2. parts
fol: 85, saith, All games
except shooting are un-
lawfull.

10: day.

14 To certifie into the
Kings bench the names of
thas shall absent them-
selves from the Church
twelve moneths,

27 Eliç. 7

To bee bound in the
Kings bench in two hun-
dred pound to be of good
behaviour.

If he come not then to
Church in twelve moneths
he forfeits his recognisance
Dals. 163. Lamb. 114.
115. 127. 130.

15 Such as repaire not
the Church Sundayes
and Holydayes,

1 Eliç. 3

3 Jac. 4

One witness.

Twelve pence for every
default to bee levied by
distresse, and for want of
distresse to be committed
to some prison untill the
same be paid.

16

16 Whosoever shall wilfully disturbe any Preacher allowed, in his open Sermon, or collation,

1. Mar: sess. 1: cap: 3:
Or shall rescue any offender, *Ibidem*,
Two Witnesses or confession,

Agnus Dei. r.

17 A Iustice of Peace must within fourteen dayes after the discoverie of any *Agnus Dei*, *Crosses*, *Pictures* or *Beades*, declare the same to some of the privie Councell.

13: *Eli*: 2:

Jesuite

18 To take the submission of any Jesuite or priest in writing within three dayes after his landing in England, and to give him the oath of Supremacy.

27 *Eli*: 2

19 Require any seditious secretary if he shall not conforme within three

The Stocks is a Peneth
Dyer 99. pl: 67:

To bee committed safe keeping, and within six dayes (if upon Ex-
nation) that Iustice or one other shall finde guiltie, then to bee committed for three moneths.

Premunire.

And to certifie the same and submission into the Chauncery within three moneths, upon paine of hundred pound.

See Sect. 21.

If hee refuse to abjure is felony, but this abjuration must bee made in moneth

Peneths after his convi-
on to conforme, and in
ault thereof to requi e
to abjure the Realme:
35 Eliz. 1. &

Require any popish
cufant above fixtene
res of age, which shall
waile five miles from
dwelling without li-
ce (if he have lesse then
eny Markes freehold
annum, or be not worth
ry pound in goods) to
conforme,

35 Eliç. 2

To give the oath of
premacie to any Priest
efuite, that shall with-
three dayes after the
ding submit himselfe,
under his hand ac-
nowledge his obedience
to the Kings lawes in
thes of Religion.

27 Eliç. 2

Such as shall curse
weare, if it bee com-
ined of within twenty
es.

21 Jac. 20. &

pen Sessions.

If he shall not conforme
within three moneths,
then two Iustices of the
Peice or Coroner may re-
quire him to abjure, and
must certifie the abjurati-
on at the next Assizes, and
if he then refuse to abjure,
it is felony without Clergy.

Recusat.

And to certifie the oath
and submission within 3.
moneths into the Chaunce-
ry, *sub pena 100. lib.*

Swear.

Twelve pence to be le-
vied by distresse, or to sit
in stocks three houre.

If hee bee under twelve
yeares of age to be whipped
Two

Two Witnesses or confession.

Ier. 5. 7. Thy children have forsaken me, and sworne by them that are no gods, &c.

Matth. 5. 36. Swear not by the head, for thou canst make no haire white or black.

by the parents or C
ble.

Faith the greatest
Plusarch in vita
Pompiliis. page 84.

Hue &
cry.

23 Command Hue and cry to be made after felons Stat. Winchest.

watch.

2 Set Watches between the Feast of Ascension and Michaelmas, *ibid.*

3 Cause high wayes to be enlarged.

4 Choose two Constables in every hundred, Stat. Winch

5 Require Constables to present such as lodge any Strangers in any upland townes, for whom they will not answer, Stat. Winchest.

Quere, if they shall receive them to house before nine of the clock at night.

To be fined upon en
ry. and authoritie war
ven to one iustice of
by expresse words inter
old commission of
peace.

Tamen Quere, see
cognita, 1.

Hundreds were den
out of Countie, and
very hundred was ord
ed a conservator of
peace, who is called
Constable; after Bur
were made, and in the
Conservator called a
ty Constable, and in
places Burrowhead, T
H. 7. fol. 18. But by
Winchest. Iustices
choose Constables in
ry hundred.

Feinite.

24 To informe some of

Offences. | One Justice. | Penalties. 9

the privie Councell with-
in twenty eight dayes af-
ter the discovery of any
Iesuite or Priest, and to
take a note of that under
their hands.

27 *Eliç. 2.*

25 If any above the
age of eighteen yeares shal
be presented or indited
for not comming to
Church. Or if the Mini-
sters, petty Constable, and
Churchwardens, or two of
them shall complaine of
any suspicion.

7 *Iac. 6*

26 If any suspected to
be a Iesuite or Priest shall
refuse to answer directly
whether he bee a Priest or
Iesuite.

35 *Eliç. 2*

27 To take information
of him that wil give notice
of Masse to be said within
three dayes after the of-
fence,

3 *Iac. 5*

Two hundred Markes.

Require him to take the
oath of allegiance which
if hee refuse, hee is to bee
committed untill the next
Sessions or assizes.

Allegan.

To be committed with-
out bayle untill hee will
answer directly.

Fesuit.

See prczognita. 8

Masse.

10 Offences. | One Iustice. | Penalties, Offences

Armed. 28 Persons riding armed,
Stat. North: 2 Ed. 3. 5,
 Vpon view.
 As to weare a coat of Maile secretly, *Puls. de P. fol. 3. sect. 8.*
 Or to carry Daggs and Pistolls.
Cook. lib. 5. fol. 71.

To take away their armour, and to be imprisoned at the Kings pleasure. Or hee may enquire and praise their Armour by Iury, *Lamb. 169. 171. 18.*
 Iustices of peace may also command weapons to be taken away from such prisoners as are brought before them, *Dalt; p: 30.*

*Peit
 trns.* 29 Trespasses in Orchards, Woods, rayles, corn, &c.
 43. *Eliç: 7*
 One Witness

To give satisfaction to be whipped.
 The Constable to be committed untill hee procure such to be whipped.

Tyle. 30 Offenders in making of Tyle,
 17. *Ed. 4. 4*
 By Inditement, or two Witnesses.

For every hundred of plaine Tiles, five shillings.
 For every hundred of roofe tiles six shillings eight pence.

Tent. 31 Having tentors for Cloth.

39 *Eliç. 20*

43 *Eliç. 10*

4 *Iac. 2*

21 *Iac. 18*

Vpon view,

Any Iustice of Peace or head Constable upon view may deface them for *Stat. 39. Eliç.* is made to extend to all places within the Realme, by 43 *Eliç. 10.*

Hee may sell them and give the money to the poore.

2 No Fayres or marriages to be kept in any church or Church-yards.
Stat. Winch. 13. Ed. 1.

Fine, see sect. 23.

Fayres.

33 Souldiers purloining horses, Harnes, or Armour.
2 and 3 Ed. 6. 2.
complaint, and prooffe.

Commitment untill hee make satisfaction.

Souldiers.

34 Sheriffes entring of more plaints then one for one cause.
Or if the plaintiffe put it in securitie to prosecute his action, *Lambert*, 10.

Forty shillings for every plaint, and the Iustice of peace must certifie it into the Exchequer, upon pain of forty shillings.

sherriffs

11. H. 7. 15
By examination of the shire-Clerke and Plain-
tiffe.

Proccesse as in trespass.

35 Bailiffes of the hundred, for not warning the defendant in County courts.
11 H. 7. 15.
Bailiffes to be convicted upon their examination.
West 2. 36 Bayliffes to be sworne.

Forty shillings for every offence. *ut supra.*
Quare, whether he must be the sworne Bayliffe.

Bailiffs.

36 Bayliffes and others

Forty shillings for every
C 2

12 Offences. | One Justice. | Penalties

gathering the Sheriffes a-
mercements, before they
are examined by two Ju-
stices of the peace.

Or if the Bayliffe be not
sworne.

Or shall take more then
is Extreated.

11. H. 7. 15.

Vpon Examination con-
vict,

Gun. 37 He that shooteh in
any gun at any thing at
large, (except it be with-
in five miles of the sea.

33 H. 8. 6

Vpon examination and
prooffe.

And except he be licen-
ced to kill Hawkes meat.

1 lac. 27 &

The Kings officers may
use and carry daggs and
handguns in execution of
Justice, *Cook. lib. 5. fol. 72.*

Forty shillings for every
offence processe as in
passe.

Note, the hundreds
liffe must serve the
tie processe.

Ten pound to be est
into the Exchequer,
imprisonment untill
ment.

He that hath 100. po
per annum may seise
short gun or crosbow.
H. 8. 6.

Or any Gun or
with which any shall
any Deare or Cunnies,
offender not having for
pound land *per annum*,
not worth two hund
pounds in goods, or
severall grounds for
nies worth forty pound
annum, and also hee
seise any Cony-dogs or
rets of such by

3 lac. cap. 13. &

watch. 38 Such as are suspected

Committed untill

Offences. | One Iustice. | Penalties. 13

the robbers and taken by
watch,
5 Ed. 13, 14

Assizes or by 34 Ed. 3. 1
2 to be bound to the good
behaviour.

To put in overleers,
conservators of Ri-
s, and survey them.
17 R. 2. 9

Rivers.

If any horse be stolen and sold in open market,
owner or his Executors may within six moneths af-
such horse is stolen make his claime before a Iustice
peace, neare the place where the horse is found, so as
pose be made within forty dayes after, by two Wit-
nes upon oath, before such Iustice. And such sale ta-
h not away the property of the Horse, but the party
y have his Horse againe upon payment of so much
ney as the partie who bought it shall depose it cost
n.

*Horse
stolen.*

31 Eli. 12.

Such as take Sal-
mons betweene the eighth
September, and the ele-
venth of November.
for O or at Mill-pooles from
the middest of Aprill un-
till Midsummer.

1 Burne the nets.
2 Imprisonment one
quarter of a yeare.

Lamb. 190

Vnder conservators shal
have halfe the fine upon
inditement,

Salmon

West 2. Anno 13. Ed.

1. 46.

13. Ri. 2. 2

Lamb. 190.

Vpon view, or by indict-
ment. By 17 R. 2. cap. 9.

by 17 R. 2. cap. 9

C 5

43

14 Offences. | One Justice. | Penalties

Fish.

42 Such as use nets at any time, by which the fry of fish may be destroyed.

13 R.2 19

Vpon view or enquiry.
by 17. R.2.9

To burne their net *supra.*

43 Such as fish within five miles of the Sea, with any drawe net, which is not one inch and an half from knot to knot,

3 Iac. 12.

Lamb. 103.

Forfeit the net, and shillings to bee levied and distresse and sale, retaining the over-plus by dictment in Sessions.

Servants.

44 If any servant shall goe out of one towne into another without a testimoniall of his lawfull departure.

5 Eli2. 4.

Imprisonment until procure a testimoniall which if hee cannot within one and twodayes, to be punished vagrant.

But this is to be understood of servants in husbandry, and some other mentioned in the said

45 If any bee required to serve as an apprentice being betweene the age of ten and eightene yeares, and shall refuse, it being to husbandry and other arts mentioned in the statute of

5 Eli2. 4

To be committed until he will serve.

To cause Artificers
other persons able to
ur to work by the day
y or corne harvest.

5 Eliz. 4.

Imprisonment in the
Stocks two dayes and one
night by the Constable,
upon paine of forty shil-
lings on the Constable in
Sessions.

Artificers

Give licence under
hand and seale, to any
wil travaile from one
tie unto another for
ke in harvest.

5 Eliz. 4.

To allow the cause
putting away of any
vant within his terme,
Eliz. 4 Dalt. p. 60
not of an Apprentise.

Exants

Examine such as take
esants and Partridges
the night time, or hawke
eared or coddled corne,

23 Eliz. 10

Bind them over unto
the next Sessions, which if
they shall refuse, to commit
them to prison.

Phesants

To take Recognisance
or appearance of such as
ke Phesants or partrid-
es, with Setting-dogs or
ets, and to returne it to
the next Sessions.

7 Jas. 11. 8

Guns

51 Estreat into the Exchequer the forfeiture of such as are convicted before him. for shooting in crossebowes and hand guns.

33 H. 8. 6

Hyway

52 Certifie into the Sessions the offences presented unto him for not coming to the highways.

3 Mar. 8.

5 Eli. 13.

18 Eli. 9.

Five pound if the Iustice doe not certifie Sessions.

Forty shillings if Warden shall not certify the Iustice.

53 To present the Constable and Churchwardens to the quarter Sessions, if they shall not yearly the Tuesday or Wednesday in the Easter week, call together the Parishioners, and choose surveyers for the amending of the highways.

5 Eli. 13

Vpon which presentment they are to be fined in the quarter Sessions, their neglect.

54 To present the Constable and way-wardens, if they shall not appoint six dayes for amendment to the high wayes leading of Market townes.

5 Eli. 13

To bee fined in Sessions upon the Iustices presentment.

55 If any householder, cottager, labourer, &c. do not worke, or send some sufficient labourer to work eight houres upon every of the said six dayes.

5 Eliz. 13
Dalt. 52

To be fined in Sessions upon the Iustice his presentment.

the
fie
if
cer
56 If any fence, hedge or ditch next any highway, be not from time to time diked, kept low, and repaired by the owner of the same ground.

5 Eliz. 13.
Dalt. 52.

To be fined ten shillings in Sessions.

And for other grounds adjoyning to the grounds next unto the highways, twelvecence for every rode.

refe
be fin
ons,
57 If any chosen to be surveyers of the highways, shall refuse and not take upon him the execution thereof.

5 Eliz. 13

To present it in Sessions where he is to be fined.

esio
refe
58 If the surveyers for high-ways doe not within one moneth after the offence, present the neglect of such as absent themselves from working at the highways.

5 Eliz. 13

To be fined forty shillings in Sessions upon the presentment of any Iustice of peace.

18 Offences. | One Justice. | Penalties.

Amercements.

59 If the Bayliffe or high Constable, shall not levie ameracements estreated for not repairing of highwayes.

Or shall not make a true account and payment of summes levied to the Constable and Churchwardens of the parish.

Or if the same bee not employed upon the highwayes of the parish.

5 Eliz. 13

To bee fined in sessions upon the presentment of any Iustice of peace.

Rogues.

60 Wandring Rogues.

39 Eliz. 4 ♂

To be whipped and sent to the place of their birth.

If the Constable punish them not hee forfeit ten shillings to be levied by warrant from two Iustices.

Labor.

61 Such as will not worke by the appointment of the Overseeres.

Or Common laborers which refuse to worke for wages assessed.

39 Eliz. 4. ♂

Iudges resolution. Yo.

43 Eliz. 2 ♂

7 Jac. 4

Bridewell.

62 Such

Offences. | One Justice. | Penalties. 19

62 Such as refuse to beare the charge of their commitment to the Goale

3 *1ac.* 10. ♂

63 Give testimoniall of the landing of Souldiers and marriners under his hand, setting downe the place of his landing, and the place to which he is to passe.

39 *Eliç.* 4. ♂

39 *Eliç.* 17. ♂

He may beg.

64 Such as shall adviſedly publiſh any falſe prophesies.

5 *Eliç.* 15. *Dalt.* 78.

By inquiry.

65 If any deceitfull mault be made to be ſold. Or any mingled mault.

2 *Ed.* 6. 10 ♂

27 *Eliç.* 14

21 *1ac.* 28

upon view or information.

66 If any man ſhall miſuſe his apprentice and

To be levied upon their goods, by diſtreſſe and ſale by the appraiſements of foure honeſt perſons.

gack.

If he exceed the time limited in his paſſe 14. dayes (except he be ſick) or ſhall have any forged paſſe knowing the ſame: it is felony.

man = ners.

Comming from his Captaine without a teſtimoniall of his landing, or any forged teſtimoniall is felony.

Imprisonment one yeare without bayle and torſeits ten pound.

Prophes = 5 yrs.

The Conſtable may ſell it with the adviſe of one Juſtice of peace.

Mault

To take bond of the maſter for his apprentice will

Appnt?

20 Offences. | One Justice. | penalties.

will not bee ordered by a
Justice of peace,
5 Eliç. 4.

at the next quarter Sessi-
ons.

*Bargⁿ
sale.*

67 To joyne with the
Clerke of the peace in ta-
king and inrolling of
deeds of bargain and sale
acknowledg'd before them
within six moneths.

27 H. 8. 16

Fees for land under forty
shillings *per annum*, two
shillings, (*i. e.*) twelve
pence to the Justice, and
twelve pence to the clerke
of the peace.

If it be above forty shil-
lings *per annum*, five shil-
lings, that is two shillings
six pence to the Justice and
two shillings six pence to
the Clerke.

Corne

68 To joyne with the
Customer in certifying the
unlading and selling of
corne and Cattell (carried
from one place of the
Realme to another) to the
customer where it was la-
den.

15 Ed. 4. 14

13 Eliç. 25

*Transp-
ting.*

69 Transporters of
Corne, Mault, Beere, But-
ter, Cheefe, or wood unto
any place beyond the seas.

2 Mar. 5.

By enquiry and Exami-
nation of the Maſſer and

1 The owner of the Ship
doth forfeit his ship (if he
doe know the same by,

5 Eliç. 5

2 The owner of the
Corne doth forfeit the va-
lue.

Mar

Offences. | One Justice. | penalties. 21

Marriners, see

21 *Iac.* 28. altered.

3 *Iac.* 11. if mault.
be at 2. s. per bush.

3 The Master and mar-
riners doe forfeit their
goods, and imprisonment
one yeare.

70 To Examine the ser-
vants and workemen of
Dyers upon oath, if they
use any Logwood, and to
bind the Master and Ex-
aminants to the next Ses-
sions.

39 *Eli.* 11

Who upon conviction in
Sessions is to be fined ten
pound, and to stand in the
pillory.

24 yrs.

71 To take the exami-
nation of such as are
brought before him, for
felony or suspition thereof,
with the information of
those that bring them, and
to put the same in writing.

3 *Mar.* 10.

Vpon paine to be fined
by the Iustices of Goale
delivery.

*Exam =
nacion.*

72 To let to bayle such
as are imprisoned in the
common Goale (if it bee
not for felony or suspition
hereof, or for any higher
offence, or where bayle is
not forbidden by any spe-
ciall statute.

3 *H.* 7. 3.

Dalt. 33.

Bayle.

22 Offences. | One Iustice. | Penalties. Offences.

News.

73 Such as are accused for reporting of false news contrary to *West* 1. 34.

and 2 *Ri.* 2. 5

and within three moneths after the offence committed.

2 *Mar.* 3

1 *Eli.* 6

23 *Eli.* 2. 8

To bee committed to prison unlesse he produce his author.

Or he may be bound to the good behaviour, for is a breach of the peace, *Puls. de pace*, fol. 12. and the writ upon the case is *contra pacem*,

see 2 *Ri.* 2. cap. 5.

Taxes.

74 If no taxe bee made for hospitals by the parishioners, Churchwardens, and Constables.

One Iustice of the peace neare the place may make it.

43 *Eli.* 2. 8

And levie it by distresse and sale and for want of distresse commitment.

If they make the rate themselves, they may levie it without any other warrant.

75 The like order is to bee taken for the asseesse of souldiers and mariners.

43 *Eli.* 3. 8

76 In default of parishioners and Churchwardens for reliefe of disabled Souldiers to tax the parish for his reliefe untill the next quarter Sessions.

39 *Eli.* 17. 8

43 *Eli.* 3. 8

If the Churchwardens do make the rate they may levie the same without any other warrant.

But if the Iustice of peace doe make it, it must be levied by warrant from him.

Offences. | One Justice. | Penalties. 23

77 To grant warrants
such as hunt with pain-
faces or disguised by
t in warrens or parkes
shall be suspected of
hunting.

H.7.7. Lamb.191

78 He may seise within
moneth after the arri-
all, all the goods of one
with people calling
themselves Egyptians.

H.8.10. Lamb.196.

79 To take examination
such as are robbed,
whether he knoweth any
the parties that robbed
in, and to bind him to
secure them by indict-

ent. 27 Eliç.13

80 To give notice to a
person to forbear to
have or keepe such as
obstinately refuse to
come to Church by the
ace of one moneth.

35 Eliç. 1 &

To administer an oath

If he willingly conceale
such hunting or any per-
son with him, its felony, or
therwise it is but trespassse
fineable in the quarter ses-
sions.

Hunting.

And keepe the moitie
thereof to his own use and
account for the rest in the
Exchequer.

After the moneth the
King is to have all the
goods. See 2 Mar.4.

Epiphās.

If he refuse to be exami-
ned upon oath, or will not
be bound to prosecute, hee
cannot bring his action
and recover upon the hun-
dred.

Robbery.

Forfeit ten pound every
moneth. But its meant of
any servant sojourner or
stranger, that he shall re-
taine in his house, by stat.

3 Jac.4.

Church.

to such

2 recusat.

24 Offences. | One Justice. | penalties.

Such confined recusants as
is licensed to travaile by
him and three other Ju-
stices upon businesse.

3 Jac. 5
Lamb. 296

Corne.

82 If any one having
licence shall transport any
more corne, victuall, or
wood, then shall be con-
tained in his licence.

Or having any licence
shall lade the same or any
part thereof, at sundry or
more then one place.

2 Mar. 5

By enquiry and exami-
nation of the Master and
mariners.

Forfeit trebble value
and imprisonment one
yeare.

Forfeit all such corn as
all his goods and chattels

Lords day.

83 No carryer with
horse, wayne or cart, nor
Drovers with cattell tra-
vaile upon the Lords day.

No Butcher by himselfe
or any for him, shall kill
or sell any victuall upon
the Lords day.

3 Caroli 1. §

Two Witnesses, view or
confession.

20. s. for every offence
be levied by distress
and sale, to the use
the poore.

6. s. 8 d. if questioned
within six moneths.

And the Justice shall
reward the informer with
a third part of the pen-
tie.

*Althowfe
unlicencd.*

84 Such as commonly

Twenty shillings to

87 If
not pay

Offences. | One Iustice. | Penalties. 25

sell Ale, Beere, Cyder, or Perry without licence.

3 Car. 3

Two Witnesses, or confession.

poore by distresse, and sale after three dayes restoring &c. And if no distresse, or not paid within six dayes, to be whipped.

If the Constable doe not punish him, hee is to be committed untill hee pay forty shillings, or cause him to be whipped.

Second offence, Bridewell one moneth.

Third, untill delivery by Sessions.

85 Compell such as refuse to take any crakt money in payment.

19. H. 7. 15

In discretion hee may commit him to prison.

See p^recog. 8.

mony.

86 Command persons dwelling in any house infected with the plague to keepe in.

1 Jac. 3
Lamb. 197.

If they shall afterwards attempt to go abroad, they may by violence be enforced to keep their houses.

If they goe abroad after restraint they become felons or vagabonds, in sundry cases mentioned in the same Statute.

Plague.

87 If any clothier shall not pay their carders spin

hee forfeits treble the wages to the workman
net and

wages.

26 Offences. | One Justice. | Penalties.

and other labourers their wages in lawfull money.

If any Clothier shall deliver excessive weight to his workmen, &c.

4 Ed. 4. 1.

By examination.

for every default.

He forfeits six pence to the workman for every offence: and

To be committed untill payment.

Carders.

88 If any carder, spinster, weaver, fuller or dyer doe not his dutie in his occupation.

4 Ed. 4. 1

By examination.

Forfeits double wages to the partie grieved, and to be committed untill payment.

Which also Constables may punish.

12 Ri. 2. 3

Petty Sessions by Constables,

and 25 Ed. 3. 6. for labourers.

Souldy.

89 If any souldier or marriner having any pension shall be taken beging or shall counterfeite any certificate.

43: Eli 2: 3:

He shall loose his pension, and bee punished as a common rogue.

Robbery.

90 Totake the Examination of any man robbed whether he doth know any of those that robbed him,

27 Eli 2. 13

To bind him in sufficient Recognizance (twenty dayes, at least before hee bring his action against the hundred) effectually to prosecute the said robbers by indictment.

1		
2		
3		
4		

28. Offences. | One Justice | penalties. Off

	95		99
Can	96		100
Sou	97		101
Ro	98		102
			99

99

101

100

101

102

99

103

3^o Offences. | One Justice | penalties.

103

104

105

106

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Offences. | One Justice. | Penalties. 31

107

108

109

Offences. | Two Justices. | Penalties.

110 Clothiers and others refusing to pay wages, assessed in Easter Sessions.

1 Jac. 6. 8

Quo. muni.

Two witnesses or confession,

Ten shillings to be levied by distress and sale.

Wages.

D4

111 15

Loathy

111 If any shall put any
Flocks, Noyls, or Thrumbs
into any broad cloth.

21 Jac. 18. &

Two Witnesses, or con-
fession.

Five pound to be levie
by distresse, and for war
of distresse to be commi
ted.

Cloth.

112 Appoint overseers
for Cloth in townes not
corporate and to sweare
them.

3 Ed. 6. 2

39 Eliç. 20

43 Eliç. 10 &

If any refuse to bee o
verseer, hee forfeits four
shillings, and to bee com
mitted till payment.

And in case they search
not once every quarter
they forfeit ten pound.

by 3 Ed. 6. 2.

113 Charge overseers
for Cloth in Townes not
corporate, upon their oaths
and to bind them in recog-
nizance of 40 l. to do their
endeavours to disclose the
fraud in making of cloth.

39 Eliç. 20

Dalt. 53.

If any refuse to bee
bound or appeare he for-
feits five pound and to be
committed till payment.

And if Iustices of the
peace doe not appoint o
verseers, they forfeit five
pound.

3 Ed. 6. 2.

114 Vpon complaint of
any overieer for Cloth,
to call any person (by
warrant) before them and
to examine him upon oath
for discoveme of any of-
fence.

21 Jac. 18

115 Carp

ies. Offences. | Two Iustices. | penalties. 33

115 Carders, Weavers,
Sorters, and Spinners, Em-
bellishing any wooll or
yarn.

7 *Iac.* 7.

1 Witness.

To give satisfaction or
to be Stocked, or whipped
And so also are the re-
ceivers knowing the same.

spinners

116 Persons restrained
from mauling by order in
Sessions.

39 *Eli.* 16. &

Two witnesses, or con-
fession.

Commitment three days
without bayle and thence
forth untill he be bound in
forty pound by recogni-
sance to obey such order
of restraint.

maulers

117 Takers of Phe-
sants or Pheasants, or Par-
tridge.

7 *Iac.* 11 &

One Witness.

After his conviction be-
fore two Iustices, &c. one
Iustice may bind him by
Recognisance in twentie
pounds, not to kill or de-
stroy any more.

Pheasants.

The punishment being
commitment 3. moneths
or to pay twenty shillings
for every one.

118 Such as destroy
Pheasants, Partridge or o-
ther fowle, &c. with Guns
or Bowes, Nets or other
Engins.

To be committed three
moneths, unless he forth-
with pay to the Church-
wardens twenty shillings
for every fowle.

1 *Iac.*

Partridge 20.
shillings.
Other Fowl ,
20. shillings.
Egge of Fowl ,
20. shillings.
Every Hare, 20
Shillings.

Two Witnesses or con-
fession.

Greyhound. None may keepe any
Grayhound or dog to take
Partridge, unlesse hee have
ten pound inheritance,
thirty pound freehold, or
worth two hundred pound
in goods, or shall pay for-
ty shillings to the poore,
but being convicted as a-
foresaid, he shall be com-
mitted and imprisoned as
aforesaid.

1 Jac. 27. ♂
Lamb. 334.

Or after one moneth
commitment, to give
cognisance in twent
pound to kill no more.

Hee that hath for
pound *per annum* of free-
hold, or eightie pound
lease, or worth foure hun-
dred pound in goods, ma-
by himselfe or his men
servants take Partridge
the day time, between Mi-
chaelmas and Christmas.

7 Jac. 11.

*Setting-
dog*

119 Give warrants to
the Constable or Tyth-
ingman, to search the hou-
ses of persons suspected,
for Setting-dogs, or Nets,
other then such as have
forty pound *per annum* in
lands, eighty pound in
lease, or not worth foure
hundred pounds in goods.

7 Jac. 11. ♂

And such as they find
cut in pieces, kill and de-
stroy.

Offences. | Two Iustices. | penalties. 35

120 Such as Hawk betweene the first of Iuly and the last of August.

7 *Iac.* 11. ♂

33 *Eli.* 10

Two Witnesses.

Commitment three moneths, or to pay forty shillings for every Hawking, &c. and twenty shillings for every Pheasant, and Partridge, if convicted within six moneths.

Hawke.

121 Such as have and use any Guns or Bowes to kill Deare and Conies, or keepe Haies, Pursnets, Ferrets, or Cony-dogs, unlesse he have forty pound inheritance *per annum*, or worth two hundred pounds in goods, or have warren or grounds inclosed, the profits whereof is worth forty pounds *per annum*.

3 *Iac.* 13. ♂

He that hath one hundred pound *per annum*, may take and keepe them for his owne use.

Other offences to be punished in Sessions.

Guns & Hays & Ferrets.

122 Defaults of Officers touching weights and measures.

11 *H.* 7. 4.

Quo. writs

Enquiry or examination

Fyne.

weights.

123 Set fines upon such as shall buy and sell with unsealed weights and measures.

11 *H.* 7. 4.

To bee fined in discretion.

Quo.

11 H. 7. 4

Quo. unus

Vpon Examination or enquiry.

Note, water measure
five pecks to the bushell.

Preacher

124 Such as shall disturb any preacher licensed.

1 Mar. Parli. 1 c. 3
Two Witnesses.

Commitment 3. months
and further untill the next
Sessions.

Faires

All faires and markets shall cease on Sundays, Ascension day, Corpus Christi, Assumption of our Lady, All Saints and good Fryday, (four Sundayes in harvest excepted) and except necessary victuall.

27 H. 6. 5.

Vpon paine of forfeiture of all the goods so shewed to the Lord of the franchise or libertie.

But they may keep their faires and markets three dayes before or after
Quere, if Iustices of the peace may punish by the Statute.

Recusant

125 To require such popish recusants convict as shall travaile above five miles (if they conform not within three moneths, and shall have lesse than forty markes per annum, or not worth forty pound in goods) to abjure.

35. Eli. 2

Lamb. 338

If he refuse to abjure, is felony.

See Sect. 20

This abjuration must be certified unto the next Assizes.

After a man hath abjured and goeth not out of the realme, he must be indicted thereof.

Lamb. 551

126 Require any one that is convicted or indicted for not coming to Church or that hath not received the Sacrament, The year past or any knowne person, passing through the Countrey who being examined upon oath confesseth himselfe to be a recusant, or that he hath not received the sacrament within the year past, to take the oath of allegiance. 3^d Jac. 4. Quo. writ.

127 Require the oath of Allegiance, of any above the age of eightene years, and under the degree of a Baron. 7 Jac. 6. Quo. writ.

128 Search the house of any popish recusant convicted, or whose wife is a recusant, convicted for popish books and Reliques. 3 Jac. 5

129 Such married women as are convicted recusants,

If he shall refuse to take the oath to be committed untill the next assizes or Sessions.

If he refuse to take it to be committed without bail untill he will take it.

To burne such books and reliques, but if it be a crucifix or relique of price it is to bee defaced in open Sessions and restored againe to the owner.

If she conform not within three moneths to be committed untill &c. unless

Allegiance

Recusat.

38 Offences. | Two Justices. | penaltie

7 Jac. 6.
Quo. writs.

lesse her husband will pay
ten pound monethly, or
the third part of his lands

130 To take the sub-
mission of any person re-
conciled to the Bishop of
Rome, within six dayes af-
ter his returne, and give
him the oathes of Supre-
macie and allegiance, and
to certifie the same unto
the next Sessions.

3 Jac. 4.

Forty pound if he certi-
fie not the same unto the
next Sessions,

Jesuits,

131 To examine any
unknowne person, whe-
ther hee bee a Priest or
Iesuite.

35. Eli. 2.

If hee refuse to answer
directly, hee is to be com-
mitted untill he will an-
swer.

132 to take the oath of
allegiance of such as have
charge of Castles, Forts or
Garrisons, and Captaines
having charge of Souldiers
within this Realme.

7 Jac. 6.
Quo. writs,

If any shall refuse he is
to be committed untill the
next Sessions or assizes.

Poor

133 Putting such poore
out of their parishes, as
are not to be put out.

5 pound and to be bound
unto the good behaviour
by warrant from two Ju-

39 Eli.

39 Eli. 4. ♂
Two witnesses or com-
mission.

Justices. Quo. unus.

34 Defaults of over-
sight for the poore.

43 Eli. 2. ♂

Quo. unus.

Two witnesses.

Twenty shillings for e-
very neglect, or not meet-
ing monethly.

If they refuse to give ac-
count to be committed.

35 Such as run away
leave their charge up-
the parish.

7 Jac. 4. ♂

Such as threaten to run
away.

7 Jac. 4. ♂

Two Witnesses.

To be punished as incor-
rigible Rogues.

To be sent to Bridewell
unless they give security
to discharge the parish.

Rogues.

36 If any woman
shall have any bastard
child which may bee
chargeable to the parish.

7 Jac. 4. ♂

1 Bridewell for one
yeare, but she must be sent
it seemeth from the privie
Sessions.

2 Bridewell one yeare,
and bound not to offend
so againe.

Bastard.

37 To take order for
the of bastards, and
ease of the parish, and
the punishment of the
mother and reputed father.

18 Eli. 3. ♂

If they performe not
the order without appeale
and bond given to abide
the order of the next Ses-
sions (if they there shall
make any) or else to obey

Quo.

40 Offences. | Two Iustices. | penalties

Quo. minus.
It seemeth the mother
may bee examined upon
oath.

Dalt. 32.

obey the former order
they are to bee committed
untill, &c.

Poor.

138 To licence poore
people to travaile to Bath
and Buxton.

39 *Eli. 4. 8*

If they have no licence
they are punishable
Rogues.

139 To nominate over-
seers for the poore yearly
within one moneth after
Easter.

43 *Eli. 2. 8*
Quo. minus.

If there be no nomi-
nation of them, then ever
Iustice forfeits five pound
for his neglect.

Rogues.

140 Such as disturb the
punishment of Rogues.

39 *Eli. 4. 8*
Quo. minus.

Two Witneses or con-
fession.

5. pound to be levied by
distresse, and bound to the
good behaviour.

141 Officers remisse in
punishing of Rogues.

39 *Eli. 4. 8*
Quo. minus.

Two Witneses or con-
fession.

Ten pound to be levied
by distresse and sale.

142 Such as shal not apprehend Rogues be ging at their doors.

1 Lac. 7. §
Quorum unus.

Two witnesles of confession.

Ten shillings to be levied by distresse.

If the Constable do not punish such as are brought unto him, he forfeits twentie shillings.

143 To heare and determine all causes which shall come in question upon the Statute of Rogues.

39 Eliz. 4. §
Lamb. 331.
Quo. unus.

Two witnesles, or confession.

144 Such as give wages contrary to Rates in Easter Sessions.

Lamb. 330.

Such as hire servants for lesse time then one yeare, but this extends onely to some kinde of artificers, and tradesmen.

Such as retaine any servant being out of service without shewing a testimoniall of his lawfull departure from his Master.

5 Eliz. 4.
Quo. unus.

Imprisonment ten days without bayle and hee that is retained one and twenty dayes. And the covenant void.

To be committed at the Sessions.

Five pound to bee recovered in Sessions.

Wages.

Servant.

42 Offences. | Two Iustices. | Penalties

145 No artificer or labourer may depart from the retainer, untill his worke be finished, if the retainer will have him so long and pay him his wages.

5 Eli. 4.
Quodam iustis.

Imprisonment one month and forfeit five pounds the partie.

Who may have an action of debt, for the same in the Sessions.

146 If any put away his servant at the end of his terme, without quarters warning.

If any servant depart without a quarters warning given before two witnesses.

If any promise to serve and will not serve.

5 Eli. 4.
Quodam iustis.

Forty shillings in Sessions.

To bee committed untill he will serve, unless he departed with the consent of a Iustice of peace.

Commitment untill he be bound to serve.

By hearing and examining the matter upon complaint.

But these servants must be retained in husbandry, or such arts and sciences as are mentioned in the Statute of 5. Eli. 4.

147 If any servant shall make any assault upon his Master, or such as shall

Imprisonment one year or lesse in their discretion or any other punishment

Offences, | Two Justices. | Penalties. 43

have oversight of him.

5 Eliz. 4.

Quorum unus.

Two witnesses or confession.

148 Appoint any woman between the ages of twelve and forty being out of service, and unmarried, to serve by the year, day, month, &c. for such wages as they think fit.

5 Eliz. 4.

Quorum unus.

And men under sixty, and above twelve years of age to husbandry.

ment they think fit, except loss of life or member.

If shee refuse to be committed untill shee will serve.

But being under twelve years she is not compellable to serve, nor bound by her covenant, neither boys except they be bound as apprentices, which they may at ten yeares, and with fishermen and gunners at seven yeares.

5 Eliz. 5

149 Remove the common selling of Ale and Beere, and if any sell without licence, or being prohibited,

5 Ed 6. 25

Quorum unus.

Commitment for three dayes and then to be fined twenty Shillings in Sessions.

They must certifie the offence and discharge at the next Sessions, which is a conviction, and upon this certificate he must be fined.

*Althouge
vntill
ced.*

150 To taxe the Countrey within five miles of any town inclosed with the

To be levied by distress and sale, and for want of distress, commitment.

E 3

plague

plague

44 Offences. | Two Justices. | Penalties. Off

Plague towards their weekly relieve.

1 Jac. 31. ♂

This tax must be certified at the next quarter-Sessions,

151 Officers remisse to collect rates made for relieve of persons infected.

1 Jac. 31. ♂

Ten shillings for every offence.

152 To appoint searchers watchmen, and keepers of persons infected with the plague.

1 Jac. 31 ♂

And to administer oaths unto them for performance of their Offices.

Lamb. 338.

If any goe abroad after restraint having any infectious sore upon him uncured, It's felony.

If he have no sore upon him he is to bee punished as a vagabond, by 39 Eli. 4 and bound to the good behaviour one year.

Tythes

153. If any shall refuse to obey the sentence of the Ecclesiasticall Judge in case of tythes. 27. H. 8 cap 20.

32 H. 8; 7
27 Eli. 11

Commitment untill hee shall stand to such order.

Robbery

154 To asseſſe townes and the hundred, for levying of money lost in robberies.

27 Eli. 13

Which afterwards is to be proportioned upon the inhabitants by the Constable, and levied by distress.

155

es. Offences. | Two Iustices. | Penalties. 45

cer-
cer-
155 To appoint what
fishermen shall be pressed
for mariners.

5 Eli 2. 5 8

Pressing
fishermen.

ery
156 To punish Rioters,

13. H. 4. 7.

2 H. 5. 8.

8 H. 6. 14.

19. H. 7. 13.

By Indictment.

Fine and imprisonment. Ryotts.

fter
se-
un-
pon
hed
li. 4
be-
157 Such as escape tax-
ation at Subsidies.

Lamb. 336.

3 Car. p. 18, 19

To be charged double
and to be punished at the
discretion of the Iustices.

Subsidy.

hee
er.
158 Bayle such prison-
ers as are committed for
felony, or suspicion there-
of.

2 Mar. 13.

Quotum litras

To be fined by the Ius-
tices of Goale delivery.

Bayle.

s to
the
con-
di-
159 To baile such as
are imprisoned upon pro-
cess from the Sessions,
made upon penall Sta-
tutes not forbidding baile

Lamb. 348

160 To joyne with the

By Statute 2. H. 5. 1.

E 3

Bi

Hospitall. Bishop and Chancellor in taking of accompts of such as have the collection of money, and revenews be, longing to any hospitall.

14 Eli. 5 8
39 Eli. 18 8

the Ordinary may enquire and punish by ceasing and lawes of the Church without any other to assist him, if it be any Hospitall which is not of foundation of the King, it be, then he must have Commission to enquire.

workes.

161 To take order for setting on work such souldiers or Marriners as doe come from the Seas, if hee cannot get worke in the place where he liveth.

39 Eli. 17. 8

And for want of work they may taxe the whole hundred for his reliefe, till he can get worke,

woods.

162 To divide the fourth part of a wood being appointed by the Sessions upon complaint of the Lords.

35 H. 8. 7
13 Eli. 21

sheriffs.

163 To over look Sheriffs bookes and amercements and to seale the Indentures of his Exchequer (being appointed by the Custos rotul. or eldest of the Quorum.

164 To sweare the un-
der Sheriffe and to give
him the oath of supremacy
and the oath for true exe-
cution of his office.

27 Eliç. 12 &

Quo. Writ.

If hee impannell any
Iury before he be sworne,
he forfeits forty pound.

The like oath they may
ad minister to every Depu-
tie, Clerke of the Sheriffe,
that hath authority to re-
turne any jury, and shall
meddle in the execution of
any processe in any court
of Records, and are Bay-
liffs of liberties, but nor
of such as gather amerce-
ments.

27 Eliç. 12 &

165 To burne all log-
wood which they shall
find in any mans custodie.

23 Eli-9.

Logwood

166 To bind to the ses-
sions such as shall get into
their hands any money or
other things, by colour of
any false tokens, or letters
in other mens names.

33 H. 8. 1

Quo. Writ.

Whereupon conviction
he is to be set in Pillory or
to have any other corporal
punishment, except death.

Falsen
tokens.

167 To convent Bay-
liffs and head Constables

Imprisonment untill
they have paid the same.
upon

Hyway.

upon complaint of Churchwardens having estreats for collecting of fines for the highways, and to take account and compell them to pay all arrerages to the Constable and Churchwardens.

3 Mar. 8

5 Eliz. 13

Quor. unus.

Constables
5283.

168 To asseſſe fines upon the Constables, if they appeare not at the petty Sessions.

7 Jac. 4. 8
Dale. 103.

Any fine under for shillings.

Falſe
news.

169 To grant a precept to the Sheriffe within ten dayes after the commitment of any one sent to prison for speaking of false newes, contrary to 3rd Ed. 4. 34.

2 Ri. 2. 5 for returning of aawy to enquire thereof.

2 Mar. 3.

1 Eliz. 6.

23 Eliz. 2. 8

Quor. unus.

Ten pounds.

Quere, if this Statute be in force, the words are very doubtfull.

170. If any retaylor
present unto them any
cloth defective either in
length or weight contra-
ry to,

4 Iac. 2

To divide the same into
three parts,

One for the overseers
and Searchers,

Two parts for the poore.

Cloth.

171 Idlers that refuse to
worke, and disorderly per-
sons,

7 Iac. 4

43 Eliç. 2

39 Eliç. 4

4 H. 7. 12.

To be committed unto
the house of correction,

Idlers.

172

173

30 Offences. | Two Justices. | Penalties. Off

174

178

175

179

176

180

177

181

Offences. | Two Justices. | Penalties. 58

178

179

180

181

182

52 Offences. | Two Justices. | Penalties

182

183

Offences. | Three Justices. | Penalties.

Apprentice 184 To make certificate for an apprentice that his parents may dispend forty shillings *per annum*.
5. Eli^z 4.

Lo: Supp. 185 To take information against such as shall deprave the sacrament of the Lords Supper.

1 Ed. 6. 1.

1 Eli^z. 1

Two Witnesses.

To binde over the accusers at the next Sessions. And at the Sessions the may grant a writ to the Bishop to be present.

Penalties. | Three Justices | Penalties. 53

86 To licence drovers
Badgers and such as
import corn and cat-
tles from one port to ano-
ther.

2 Ed. 6. 14

This licence must now
be granted in the quarter
Sessions,

by 5. Eli. 12

Provisions.

87 To baile such as
shall speake unreverently
of the Sacrament of the
 Lords Supper.

1 Ed. 6. 1.

Lo Supp.

ies.

a con-
sions.
ns the
o the

186

54 Offenders. | Three Iustices. | Penalties

191

Offences, | Four Iustices. | Penalties

Recusat. 192 To joyne with the
Lieutenant or Deputie, or
Bishop in licencing of a
confined Recusant to tra-
vaile about his businesse.

35. Eli. 2

3 Jac. 5.

If such a Recusant be
businesse for one weeke
and a licence bee granted
him for a moneth, his li-
cence is void, as Sr. Iohn
Walter Lord chiefe Bar-
delivered in his charge
Exon. the Summer Assizes
1628. Anno 4. Car.

Bridges.

193 To make taxes for
repairation of Bridges.

22 H. 8. 5.

Quor. 1711.

Recusat.

194 To give order for
taking away of armour
from popish Recusants be-
ing convicted.

3 Jac. 5.

This order must be made
in the quarter Sessions.

fautes. | Foutre Inflictes. | Penalties. 59

96

97

ant h
wee
gram
hil
Sr, la
c Ba
large
r A
l. Co

98

99

c m
ons.



19. Six Justices of the
Sewers peace (*Quorundam*) may
for one whole yeare after
the execution of any com-
mission of Sewers, execute
the lawes of the commissi-
on of Sewers, unlesse
w^{ers} be published within
the yeare. 13 *Eli.* 9

A
VADE MECUM,
AND
CORNU COPIA.

AN EPITOME
OF
Master STAMFORDS Pleas
OF THE
CROWNE,

With other Notes out of approved and
good Authors of the same
ARGUMENT.

By WA. YOUNG.



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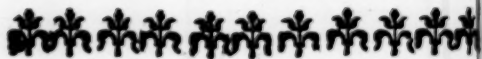
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I*T is ordered by the Committee of the House of Commons concerning Printing, that this booke intituled A Vade Mecum, and Cornu Copia: be forthwith Printed for the publike good.*

Maii 26. 1642.

John White





TREASONS.



Stat. 25. Ed. 3. 2. If any man shall compass or imagine the death of the King, The Queen his wife: or their eldest sonne and heire, or if a man deflowre the Queene, or the el-

*King.
Queene.
Prince
deflowred.*

dest daughter of the King being unmarried, or the wife of the Kings eldest sonne and heire, or if any man leue warre against the King in his realme, or being adhering to the kings enemies in the realme, or give them aid or comfort in this Realme, or elsewhere.

*Kings ene-
mies.*

If any man shall counterfeit the Kings great or privie Seale, or his Money: or if any man shall bring false money into this Realme, counterfeit to the money of England, to merchandise or put away: knowing it to be false.

*Seale, mon-
ney.*

If any shall kill the Lord Chancellor, Treasurer, or Iustices of either bench, Iustice of Eyre or assizes, or any other Iustice assigned to heare and determine being in their place, which extends to the King and his Royall Majestie: and in such cases the

*Chancellor,
Treasurer,
Iustices.*

Escheats: forfeit of Escheats doe belong unto the King.

Compassing Note, that compassing the Kings death is Treason, although it be not effected, *M. 9. H. 6. fol. 47. P. 13. H. 4. fol. 19. Stamf. fol. 2.*

Imagine, *b.* Or if any doe imagine the death of the King, and utter the same by words only. It's Treason, *ibidem.*

Consentors, Aiders. If any shall counterfeit the great or privie seal, or the Kings coyn: here is no mention made of any consentors or aider, and yet the aiders and consentors are taken to be within the proviso of this Statute. *M. 19. H. 6. fol. 47.*

Seale. Note, It is the counterfeiting of the Great Seale, to take an old Seale and to fasten the same to a writing made by the King *Stamford fol. 3. a*

Money. His Money, must be understood of money coyned within this Realm, or the members thereof, for if a man shall counterfeit the money of another Kingdome which is currant within this Realme. It is not treason by this Statute. But see the Statute of 1 *Mar. cap. 6.* If any shall counterfeit money, although hee doe not utter the same, yet it is treason. *M. 6. H. 7. fol. 13, M. 1. Ri. 3. 1. in Misprision.*

Bring. Also the words of the Statute are, If a man shall bring false money into this Realm, counterfeit unto the money of England, knowing the money to be false. Put case then that false money is made within the Realme, or within any member thereof, as *Ireland, &c.* and one knowing the same doth utter the same in payment: It seemeth it is not treason, because the Statute, 25. *Ed. 3.* doth not extend therunto, 3 *H. 7. fol. 10*

Ireland.

where

where it is said, That the Statute is to be understood of false money made in another Realme, and brought into this Kingdome. Also the false money made in another Realme, must be counterfeit to English money. But for remedie of these mischiefes, there was another Statute at the second sessions, *An. 1. Mar. c. 6.* and another made *anno 1. and 2. Phil & Mar. 11. Stat. f. 3.*

Stat. 1. Mar. cap. 6. If any person shall counterfeit any coyne of Gold or Silver, which is not the proper coines of this Realm and which shall bee currant within the Realme by the consent of the Queene her heires or successors. Or shall forge the Queenes signe Mannall, Privie signet, or Privie scale, such offenders, their counsellours, procurers, aiders, and abettors are traitors, shall forfeit as in case of high Treas.

Stat. 1. & 2. Phil & Mar. 11. If any man shall bring into this Kingdome any forged and counterfeit money, like to the coynes of any forraigne Realme, knowing the same to be counterfeit and false, with intent to utter the same, such persons their counsellors, procurers, aiders and abettors are traitors.

If any false money be made in this realm in Ireland or any dominions thereof, and another knowing the same, shall utter the same in payment, he committeth not high treason, but misprision of treason. *Tult. de pace fol. 108. sect. 6. 3. H. 7. 10. See Misprison, pag. Stat. 5. Eli. 11.* clipping, washing, rounding, or filing for gaines sake, of any proper coines of this realme: or of the money of another Realme, currant in this kingdome, and by Proclamation al-

Coines of
gold or silver
currant.

Signe man-
nual.

Privie sig-
net, privie
scale.

Forraigne
money coun-
terfeit.

Utter.

Misprison.

Clipping,
washing,
currant.

Proclamation

*Coynes not
currant.*

*Forraigne
power.*

*Bishop of
Rome.
Bookes.*

*Bulls,
reconcile,
publish.*

*Withdraw
to Romish
Religion.*

*Priests,
Iesuites.
Obedience.
Pope,
Prince,
absolved,
consecrate,
Lunaticke.*

lowed. Is Treason, *Stat. 18. El. 1. Accord.*

Stat. 14. Eli. 3. If any person shall forge, or counterfeit any coyne of Gold or Silver, not being the proper coynes of this Realme, nor permitted to bee currant within this realme: It is misprision of high treason.

Stat. 1. Eli. 1. Extolling of forraigne power: or by speech or writing to maintaine the authoritie of the Bishop of Rome.

Stat. 5. Eli. 1. Bookes in defence of the Popes authoritie, and such as bring or justify them, or that shall print them, the second offence treason

Stat. 13. Eli. 2. If any shall put in ure any Bull obtained from Rome: or if any shall reconcile any or shall be reconciled, or if any shall obtaine or publish any Bull whatsoever, its treason.

Stat. 23. Eli. 1. If any shall have or shall pretend to have power: or shall practise to absolve any subject from his naturall obedience: or to withdraw him to that intent from the Religion now established to the Romish religion; or move him to promise obedience to the Sea of Rome, Or any other Prince, its Treason.

Stat. 27. Eli. 2. If any Iesuite or popish Priest shall come into, or repaire into the Kingdome, it is Treason.

Stat. 3. Jac. 4. To perswade any subject from his naturall obedience, to the Pope, or any other Prince, to be absolved, or to promise obedience, Treason. To conceale the same is misprision of Treason.

If one who is not *compos mentis*, or lunaticke doe attempt to kill the King, it is high treason in him, *Cook lib. 4. fol. 124. Pulst. p. 400, fol. 108. sett. 3.*

If

If two or three shall conspire or Imagine the kings death, or to levie war, &c. and some of them doe the same, its treason in them all, *Pals. 108: Cook lib. 1. fol. 28. Dyer fol. 98.*

If a subject borne doe practise with a forraigne Prince to invade the realme. Its treason, *Dyer, 298, Pals, fol. 108, fol. 4.* And so it is to kill him that rides to aide the king.

*Ride to aide
the King.*

*Kings coun-
sell,
Chocke rolls.*

Stat. 3 H. 7. cap. 14. If any of the kings sworne servants of the Chocke roll conspire to destroy any of the kings privie Councell, Nobleman, or Officer of the Kings Household, it is felony, although nothing be effected.



Petty Treason.

When a Servant kills his Master, or a Wife kills her Husband, or when a secular or religious man shall kill his Prelate, to whom he oweth faith and obedience: Such treasons give the forfeiture of Escheats to the Lord of the fee. *5 E. 1. 12 Hy. 7. 1*

*Servant
wife,
Priest,
Escheat.*

But the King shall have *annum diem & vestrum* and forfeitures of chattels. And writs of *scire facias* shall goe out thereupon, without any originall. Statute. 25 Ed. 3. 2.

When a woman kills her husband, shee shall be burnt. If a servant kill his Mistress he is within the purvey of the Statute

ture, *M. 10. H. 6. fol. 47.* so if a servant after he is out of service kill his Master, it be for ill conceaved against him while he was his servant, *Aff, 33. pl. 7. Lamb. 246.*

Abettors.

Also abettors, and procurers, are contained within the last part of this Statute concerning petty Treason, although not named, *Stamford fol. 10. b.*

Sonne,

It is not petty treason for a son to kill his father, unlesse he take meat, drink, or apparell, or wages of him: and so doe his businesse, for it is an hired servant, *Lamb. 245. Crompt. fol. 13. Cooke fol. 13. 14.* And so for a bastard to kill his step-mother, Treason. But *Cook lib 7. fol. 13. b.* saith, its petty Treason in a son to kill his father though hee have not meat and drinke of him: and for a bastard to kill his mother, *Crompt. Justice fol. 13. 14.*

*Wife,
stranger,
servant*

If the wife and a stranger joyn in killing or poysoning the husband: or a servant and a stranger in destroying his Master or Mistress, that is petty treason in the wife and servant, and murther in the stranger. But if the wife and servant doe conspire to kill the husband, appointing a time and place therefore, and the servant doth execute the same accordingly in the absence of the wife then it is petty treason in them both, whereas if it had beene done by a stranger shee should have beene accessory to it as to a murther, *Dyer 332. pl. 254. & pl. 103 Lamb. 246.*

Wife absent

Note, whatsoever act will prove murther betweene strangers, the same will make petty treason, betweene those former parties, *Lamb. fol. 247.*

Note

Petty Treason.

65

Note, There is a secular Priest, which *Secular*
we call a parish Priest, and a regular or re- *priest*
ligious Priest, viz. a Monke, Fryer, &c.
which is enwed into some professed order
of Religion, and by secular man before na-
med you must not understand a lay man
but a Minister within orders, &c.

If a Subject be killed by another of the
Kings subjects out of the Realme, he can-
not be indicted for it, but an appeale lyeth *Duel*
before the Constable and Marshall and
shall be tryed by witnesses, or Combate,
Cookes Instituts fol. 74. Sir Francis Drake,
and *Downtons* case.

Murder Sequitur.

1 Lingua.

Præcepto: qui præcipit percutere & occidere quia cum non sunt immunes a culpa, immunes non debent esse a pena.

2. Auxilio, illi qui occiderunt nec voluntate occidendi habuerunt, sed ad præstandum auxilium occisoribus venerunt quamvis aliquis eorum violentia repellatur.

3. Beneficentia, ut si aliquis dissuadendo retrahit aliquem a bono proposito volentem alium liberare a morte.

1 Injustitia; ut cum Iudex reum iuste damnat.

2 Necessitate;

1 Evitabilis homicida cum evadere potuisset absque occisione tunc erit reus homicidii.

2 Inevitabilis; sine odii meditatione metu & dolore animi, se & suo delibendo, quando aliter evadere non possit.

3 Causa;

1 Siquis dederit operam rei licitæ ut quis arborum incidebat, & adhibuit diligentiam quam potuit scilicet respiciendo & reclamando nec minus tarde, ad dimittendo, sed tempore congruo, & ita clamose ut si aliquis ibi fuisset aufugere, aut sibi præcavere: non imputabitur.

2 Illicitæ, ut si quis lapidem proiecisset versus locum per quem homines transirent facere: vel dum sequeretur quis Equum vel Bovem, & aliquis a Bove vel equo percussus fuerit: hic imputabitur ei.

4 Voluntate, ut si quis ex certa scientia & insultu præmeditare, vel causa lucri, aliquem interfecit. Stamford, pag. 7

MURDER.

Murther is when any doth kill another with a felonious intent : which a man that is not *sana memoria*, cannot doe, *M. 28. H. 7. Lunaticke.*
l. 31. the same law is of a man lunaticke, dumbe and
dumb, and deafe, 31. H. 7. fol. 2. deafe.

But if one of the age of twelve yeares or *Infant.*
 more shall kill another it is felony ; or in case he be but of nine yeares, so as by any evidence it may appeare that he understood, or if it may be intended that he had knowledge of good and evill, as by his excuse ; or by any after act of his, after he committed the murder, as by hiding the body in some secret place. *quia in tali casu malitia Hiding.*
supplet etatem, ibid.

If any being no Physitian or Chirurgian shall undertake a cure, and the partie shall die under his hand, Its Felony, *Physician.*
Drum.
bl. 16.

If a man have an Oxe which is accustomed to push, and the owner knoweth the same, and doth not rye him up, but suffereth him to goe at large, and the Oxe kill a man, it is felony in the Master. *Oxe.*

If a man strike another with an intent only to beat him, yet if he shall dye of the beating, it is felony. *Beating.*

By

Inticement.

By the wicked speeches of a woman, if two men fight together, and one killeth the other, in this case the woman is arraigned of murther: *Fitz. Coron.*

Disseise.

Present.

Lye in wait.

If two persons of malice forethought lye in waite the one to kill the other, this is murther without respecting who gave the first blow.

If two persons doe mutually beare malice one to the other, and meeting by chance, they agree to goe into the field and one killeth the other, this is murther. *Lamb. 238*

Flying, pag. 13 in malice.

If a man of premedicate malice strikes at any other, and after in the fight flies to the wall, and the other persues him to the wall, and there is slaine by him that gave the first blow, this is murther notwithstanding his flying, *ibid.*

If John and William doe fight together by agreement, upon their former malice, and John woundeth William; afterwards they meet againe upon the sodaine and falling to fight, William slayeth John, this is murther in William. *Lamb. 238.*

Sodaine.

If one shall sodainly without any shew of malice draw his weapon and kill another, the Law judgeth it to have proceeded of malice, however it were secretly kept from other, *Lamb. 239. Stat. 1. Jac.*

Officer, pag. 146. arrest.

It is murther to kill a knowne Officer, or one that had and shewed him sufficient warrant to arrest him for debt only, *Lamb. 239.*

If a Harlot will take the child where-
 she is newly delivered, and cover it
 with leaves, and let it lye abroad, whereby
 vermin destroy it: so if a man take his
 sick father and carry him into the cold
 fire, whereof he dyeth, *Fit. Indist. 3.*

If a Gaoler kill his prisoner by over-
 ward keeping, *Lamb. 240.*

Againe, wheresoever a man goeth a-
 gainst an unlawfull act, as to beat a man,
 or disseise him of his land, and he doe in
 that case kill him, it is murther. So if
 a thiefe kill a man whom he never saw be-
 fore, and intended only to rob him, *Pl.*

Com. 474.

If a man command his servant to beat
 another, the which hee doth in his pre-
 sence, and he die thereof, its murther, *Pl.*

Com. 475.

Quere, if it be in defence of his goods,
 or thing, or free warren. For battery in
 defence of a mans goods, is justifiable,
Lamb. 129.

Wheras a man entred into another mans
 Orchard, and stole Peares from a tree, and
 the doing kills the owner that rebuked
 him: it was adjudged murther, *Lamb. 240.*

If a man of former malice doe shoot at
 another, and thereby killeth another against
 which he had no malice, *San. case, Com. 474.*

Aynes Gores case, Cook lib. 9. fol. 81.
 Two fight upon malice prepenfed, and
 one of them killeth a stranger, that labou-
 red to part them, it is murther in him
 that killed him, if it may be discerned, and
 not, then in both, *Dyer 228.*

Note, all such as be present, and aiding, a-
 voiding & comforting him that committeth
 a mur-

Harlot,
 Vermin,
 Sick,

Gaoler,

Unlawfull
 act,

Thiefe.

Command to
 beat.

see page 33a

Orchard,

Shoot at one
 and killeth
 another.

Labouring
 to part.

Present.

Present.

a murder, be principall murderers, as he that giveth the stroke therein, (cap. 100. *Salisburies Case. Lamb. 243.*)

But I think not in all cases, for it is there in *Plod. Com.* in *Salisburies case*, if the Master and another, shall upon meditare malice fight together, and Masters man knowing nothing of their mer malice betweene his Master and the other: but as they are fighting, the labourer to helpe his Master, and other is slaine, its there said, its a man-slaughter in the man, and murder in the Master, the reason is, because the man had no prepenſe malice him that was slaine.

Retum natura.

Note to make homicide, it is required that the thing slaine bee in *retum natura* and therefore if a man kill a child in mothers belly, it is not felony, because is hard to judge, whether he killed him or not, or whether hee dyed of some other Cause, as *Stamford. folio 20. 21.*

One yeare and day.

Note, also that in a homicide, its required that the partie hurt doe die within a yeare and day, *Stamf. 21.*

If any person shall be brought before Justice of peace, and charged with a homicide: viz. murder, man-slaughter *per infortunium*, or *se defendendo*, it shall be his part to commit him to prison, or at least if the cause will so suffer, to joyne with some other justice, in baylement of him to the end that the partie may bee discharged by arraignment and tryall: without which (or finding the truth before the Coroner, or otherwise) I see not how the Justice of peace may safely dismiss him, and

for this purpose I referre him to the Statute of Gloucester, Anno 6. Edward 1. Coroner's Chap. 9.



Homicide, Justifiable. *Stat. 12-a*

THe Sheriffe, Bayliffe, or any other who hath Warrant to arrest a man indicted of Felony, may justifie the killing of him, if hee cannot otherwise take him, *Lamb. 234.*

Ass. 22. pl. 55.

And so may any other that follow for Hue and Cry upon hue and cry raised, if they will cry. yet yeeld themselves, but stand at defence, *Fly.*

fly away, Fitz. Coron. 261.

And so if a man arrested of felony, doe Arrested of Felony.

he is coming to the Gaole offer resistance and fly, then those who have the conducting of him may without blame kill if they cannot otherwise recover him.

Lamb. 234. 235. Fitz. Coron. 288. 328.

If a Iustice of peace come to arrest Rioters.

rioters, and they resist, whereby one of the rioters is slaine, that is justifiable: because the killing in all these cases, proceeds upon necessitie, for the execution of Iustice which else could not be done. *Lamb. 235*

So when a Gaoler shall kill his unruly Prisoners that shall assault him, *Ass. 22 Gaoler.*

pl. 55.

Rob house.
Highway.

So if any attempt to rob, or murder a person in his dwelling house, or in or ne any common high-way: or feloniously break into his dwelling house in the night time, and in his attempt the parties kill him, he shall forfeit nothing thereof. Stat. 14. H. 8. cap. 5. Aff. 26. pt. 32. Stat. fol. 13. Lamb. 236.



Manlaughter or Homicide by Chance-medley

Stat. 12.

Master and
servant.

IF the Master and his servant fight against one, towards whom the master hath malice, and telleth not his servant thereof, and in that fight the servant killeth the other man: howbeit, this is murder in the master, yet it is but homicide by chance-medley in the servant. *Plod. Com. 101.* because he could not execute the malice of the master, whereunto hee was not privie.

Strangers.

So if Richard and Robert fight together upon premeditate malice, and a stranger having no malice doth suddenly take the part of Richard, whereby Robert is slaine: this is but chance-medley in the stranger, *Plod. Com. 100.*

Bucklers.

If two play at Bucklers together without any former malice, and the one slayeth the other, this is reputed to bee done by Chance.

chancemedly, *Lamb.* 248. 249.

If two fight upon suddaine offence, and without any precedent malice: and in the fight the one runneth away, and the other goeth into the next house, and there catcheth a staffe, and purtueth and killeth him that fled: this was taken to bee but manslaughter by chance-medley, for the continuance of the fury which was at the first without malice, and could not in so short time be appeased, 18, *Eliz.* Report *Crompton.* *Lamb.* 250.

Staffe.

So if the one of them had broken his sword in that fight, and had run home to his house, not being far distant, and fetched another weapon, and had therewith killed the other. And so if two had borne malice mutually, and bee reconciled together, and then afterwards they meet, and the one challengeth the other with words of misreport, whereupon by agreement they goe out of the house immediately together into the field to fight, and there the one slayeth the other: for these and such like have beene taken for man slaughter only: unless the respite and distance of time have beene such, that by reasonable conjecture, the heat of the first anger might in that meane while have beene asswaged, *Lamb.* 250. 251.

Sword.

If two fight by occasion of the evill words of a woman that is present: and the one killeth the other without any other malice: this is manslaughter, by chance-medley in the woman, aswell as in the slayer himselfe, *Fir.* *Coron.* 331. *Lamb.* 251.

Misreport.

Woman.

If two fight upon the suddain without

*Parting an
affray.*

former displeasure, and a stranger cometh to part them, and is slaine by one of them, this is man-slaughter by chance medley, *Fitz. Coron. 180.*

A stander by

So if two fight upon the sodaine without former malice, and one of them breaketh his staffe, and a stander by, which is not of their company lendeth his staffe unto him with which he killeth the other, this seemeth to bee man-slaughter by chance medley in the stander by, *Lamb. 252.*

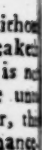


sta. 12 B. Homicide in case of
necessitie.

Burne house.

*Rob my
house.*

IF many come to burne my house, and I being in the same, I doe shoot one and kill one of them, It is no felony, *Ass. 29. Pl. 23.* So if one come to rob me in my house, and my servant killeth one of the thieves, for my house is my Castle out of which I am not bound to fly, *Stat. fol. 14.*



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 Castle
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Verdict. p. 60 prisoner killed the other, *se defendendo*, but they must declare specially how
Stamf. fol. 15.

How to bee discharged. And in these cases of *se defendendo*, hee shall be thus discharged.

Record. If he require to purchase his pardon hee shall first be let to maine prise: and shall see to have the Record certified to the Lord Chancellor, who in such case shall make him a charter without speaking to the King, *Stamf. fol. 15. b.*

No felony. Iustices of the peace cannot take an Indictment of a man which killeth another *se defendendo*, (it seemeth, because it is no felony, and their commission is to inquire of Felonies) *Stamf. fol. 15. 16.*

And it is not materiall in the forme case, though there were former malice betwene *A.* and *B.* unlesse *B.* doe lye in wait for *A.* or doe agree with him for the place for fight, or doe strike the first blow to *A.* in all which cases the flying of *B.* afterwards to the straight will not availe or helpe him at all. *Lamb. 253. 254.*

Sta. 12. r. Homicide by misadventure, or *per infortunium.*

Casting a stone.

IF a man without any ill intent cast a stone by which meanes one is killed: or shootes an arrow which strikes another and killeth him as hee is going towards the marke, this is Homicide by misadventure, for which he shall have a

par.

pardon of Course, but he shall forfeit his goods, as he shall that killeth the other in his owne defence.

*Pardon.
Forfeir.
Unlawfull
act.*

If a man doe any unlawfull thing, and kill a man by mischance, it is felony at this day, if not murther, *Stam.* fol. 16. As if A doe strike B. and C. doth come betweene them to part them, and is killed by A. or B. without any ill intent of either of them to kill him, it is felony in him that killeth him. And if A. and B. had an intent to kill one another, it is Felony in both, *Stam.* fol. 16.

*Parting such
as doe fight.*

Note, the same order is to be observed in the pleading, verdict, forfeiture, and pardon of one that killeth another by misadventure, as hath beene said of him that killeth another, *se defendendo.*

Felo de se.

Felo de se shall forfeit his goods but not his lands, because hee cannot bee attainted of the felony, *Stam.* f. 19. b. But if a man that is frantike *de die in diem*, shall kill himselfe, such a man shall not forfeit his chattels. *Stam.* fol. 19. 30. See *Beverlies case.* *Cooke 1st.* 4. fol. 124.

Attainted.

Lunaticke.



Rape.

Child.

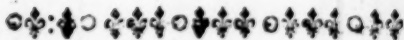
IF a Woman at the time of the Rape conceive child it is no Rape : because no woman can conceive, if shee assent
Not. Stamf. fol. 24.

*Appeale.
pleas.*

In an appeale of Rape, it is a good plea to say that before the time of the supposed rape, he kept and used the plaintiffe as his Concubine. 2. And to say that although he lay with her, yet he knew her not carnally.

*Concubine.
Carnally.**Rapuit.*

Note, If a man bee charged with Rape upon an Indictment or otherwise, he ought to be charged expressly by this word *rapuit* and not by any equivalent words, as *carnaliter cognovit*, &c. *Stamf. 24. Stat. 6. R. 2. 6.* gives a penaltie to such as shall assent to rape afterwards, &c.



Larceny.

Defect.

Furtum est contrahatio rei aliena plurimam duodecim denar. valentis animo furandi, invito illo cujus res illa fuerit.
 But it may be *res aliena*, and yet not to the value of one peny, which is not felony, but petty

petty Larceny: and it makes no matter though the thing stollen exceed not 13. pence halfe peny. if it shall exceed twelve pence, *Stat. West. 1. cap. 15. Stamford, folio 14. b.*

And note, that if any person hath at diverse times *stollen* divers parcells of goods, which parcells being put together, doe amount to above the value of twelve pence, it is more than petty larceny, for it is felony, for which he shall be hanged.

*At diverse
times.
Twelve
pence.*

The same Law, if two or three doe joyntly steale goods to the value of twelve pence halfe peny, it is felony in them all, and yet the felony is severall, *Stamf. 24.*

*Joyned se-
verally.*

And although a man bee indicted for stealing of goods to the value of twelve pence halfe peny, and arraigned thereupon yet the Iury may give a special verdict, *scilicet*, that the goods stollen were worth but 8. pence or 10. d. and upon such verdict it shall be taken as petty Larceny, *Stamford folio 24. b.*

*Iury.
Verdict.*

It must be taken *animo furendi*, which intent he must have at the time, he comes first to the possession of the goods: for if I deliver my goods to one who doth afterwards convert them to his owne use, it is no felony.

*Intent.
Delivered.*

But if a Tavernour put a piece of plate before one to drink in it, and he shall carry it away, its felony, because he delivered not the possession of it. but the use.

Tavernour.

The same Law is of a Butler, or Cooke in any house, who have my plate or vessell to use, and they carry the same away, its felony, because the possession shall be said to be alwayes in me, *Stam. 25.*

*Butler,
Cooke.*

Key of my
chamber,
Carrier.

So if I deliver one the key of my Chamber, and hee takes away my goods in the chamber, because they were not delivered unto him: So if I bargain with one to carry me certaine packs of cloath to London, and hee takes them and carries them to Bristol, and breake the packs, and take h the goods, and converteth them to his owne use, its felony, because there is more than deliverie, *scil.* a bargain, and he tooke them by the bargain, and not by the deliverie, which bargain hee did not pursue, *Stam.* fol. 25.

Shepherd.

If a Sheepheard that keepe my sheepe, shall steale any of them, and convert them to his one use, its felony, 3. H. 7. folio 12.

Money
Servant.
Delivered.

If I deliver a bag of money unto my servant to keepe, and hee goe away from me with it, it is felony, for during the time he is in my house, or with me, that which I deliver unto him is in my possession, as in the case of a Butler. But if I deliver him the bag of money to carry the same to London, to pay the same unto some man, or to buy some thing therewith, it is not felony, because it is out of my possession, *Stamford* fol. 25. *Vide.* Stat. 24. H. 8. cap. 7 for servants and apprentices, above eightene yeares imbecelling the value of forty Shillings or more.

It is felony to steale any the moveable goods of any person, as maney, plate, apparell, hay or corne severed from the ground, horses, hens, or other beasts and birds of domesticall (or tame) nature, *Lam.* 273, 274.

It may be felony also to take some that
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be of a wilde nature : as to take young pigeons or young Hawkes out of their nests or ayries before they can fly. So to take fish that be kept in ponds, 10. Ed. 4. fol. 15. 18. Ed. 4. fol. 8. Aff. 4. pl. 22. 98. 18. H. 8. 2. because the one by weaknesse and the other for restraint cannot use their nature, and cannot forsake him that hath the possession of them, Lamb. 274.

But it is otherwise of Doves and Hawks that can fly at libertie (except it bee a Faulcon, Tersellet, Laner, Lanorer, or other Faulcon, by Statute 34. Ed. 3 cap. 22 and 37 Ed. 3. cap. 19. or Partridge, coonies, herons that are abroad, (except a tame Deare, 10. Ed. 4. 15. Lamb. 274. 275.

But to take the flesh of any tame or Wilde Foule or Beast (that is dead) out of the possession of another man is felony, Straus. fol. 25. And so to take the wooll from the Sheepes back, Lamb. 275.

If a man deliver an obligation to his servant to keepe, and he tooke up the money due thereby, and went away with it. 2. If a man deliver to his servant wares to be sold at a market and he selleth them there, and goeth away with the money, both these cases are not within the Statute of 21. H. 8. for in the first case the money was not delivered but the obligation, and then the servant stole not that which was delivered, but another thing. And in the latter question, the first part of the former reason holdeth also, Lamb. 280.

But if the servant received twenty pound in gold which he changed into silver, and then run away with that, it had bene

Pigeons.
Hawkes
Fish in ponds

Falcon.
Laners.

Tame Deare

Wooll

Obligation.

Water.

Gold ex-
changed.

Fellow ser-
vant.

Carry away
sheets.

beene felony, because that gold and silver were both but money, though divers metals, *Dye fol. 5.* and it seemeth by *Dye* there, that if one servant doe deliver unto his fellow servant the goods of the master to keepe, and he goeth away with them, this shall be felony within the meaning of that Statute, because it shall be said to be the deliverie of the Master himselfe, *Lambert. 281.*

The other point concurring to make up felony, is the carrying away, or remotion of the thing that was feloniously taken. In which part it sufficeth that it bee so far removed, that the evill mind of the taker may plainly appeare, As if a guest will take the sheetes out of the chamber where he lodgeth, and then goe towards the stable for his horse, this maketh his felony full, although hee had not carried them quite out of the house, *Aff. 27. pl. 39.*

So if a man take an horse in another mans close, with a felonious intent, and be deprehended in the fault before he have led him out of the same close, *Lamb. 281. 282.*

Of what things Larceny cannot
be committed.

Savage
beasts,
Fishes.

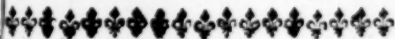
IT cannot be committed in stealing of salvage beasts, nor fish taken in a river, for such things are *nullius in bonis*, in the property of no man, *8. H. 8. fol. 2.* But

otherwise to breake a Dovehouse, and
 hence to take young pidgeons, which can pidgeons,
 neither fly nor goe, or to steale fish out of Gosbawkes.
 pond or trunk, or to take young Gos-
 bawkes bred in my parke, which is felony,
 8. Ed. 4. fol. 8. So to take a tame Deare Tame deare.
 which is domesticall is felony, 10. Ed. 4. f.
 5. Stam. f. 25. b. See stat. 5: Eli. cap.
 11, to be bound to the good behaviour,

Note this, *contractio rei alienae*, must be Personall
 of personall things: for if it bee A reall things.
 thing it is not felony, as to cut downe a
 tree and carry the same away: but if it
 were cut downe before it is felony. The
 same law is of a box of writings, be- Writings.
 cause they cannot be valued. M. 10. E. 4.
 folio.

Also Treasure trove, taken and carryed
 away, wrecke of the sea, waife and strays, Treasure.
 are not Felony, *Quia dominus rerum non*
apparet, Stam. fol. 25. b. Wrecke.
 Strays.

And yet we see it ordinarily, that men
 are and may be indited for stealing of the
 goods of a man unknowne, and the in-
 ditement held good, Dyer, fol. 99. pl.
 61, Accords.



Their of a mans owne goods.

Goods are delivered to one to keepe,
 and afterwards the Baylor, or he
 that delivered them to keepe takes
 them

them againe feloniously, it is felony. And yet the propertie was alwayes in the Robber, 7. H. 6. fol. 45. *Stamf.* fol. 26.



What persons cannot commit
Larceny.

Woman's co-
vert.

IF a woman covert shall steale any thing by the compulsion of her husband, or by the commandement of her husband, *Quere, Ass.* 27. Pl. 40.

Husband.
Goods.

The husband and wife doe commit a felony joyntly: it seemeth that it is not felony in the wife: but it shall be taken to be the act of the husband. *Stamf.* fol. 26.

Wife deliver
goods.

A woman covert cannot steale the goods of her husband, and if she takes her husband's goods and gives them to another, it is no felony in the donee. *Stamf.* fol. 27.

But the wife may become a felon by her own act, the husband not knowing thereof, as if she steale another mans goods, she shall receive the thiefe that stealeth them. *Coron. Fisz.* 383. *Lamb.* 282.

Wife.

To take a woman away with the husband's goods, felony. *Crompt. Iustico* fol. 118. *Ed.* 3. 32. *Stamf.* 94. *West.* 2. cap. 35. *De uxore abducta cum bonis viri, habet Rex seclannus bonis sic asportatis, Quere.*

Robbery.

Robberie.

Robberie is when a man takes any thing from the person of another feloniously, although the thing taken be not of the value of one penny. *Defined*

It seemes that if a man take away my goods openly in such a place where I am present and against my will, it is robbery, albeit he take it not from my person. *In my presence.*

If a thiefe shall threaten me to deliver him my purse or els he will kill me, for feare whereof I doe deliver him my purse, it is Robbery atwell as if he had taken it from my person. *Threaten to deliver my purse.*

And therefore if two or three take one and make him to sweare that he will bring them an hundred pound, and if he will not they will kill him, and afterwards hee doth bring them an hundred pound, accordingly, It is Robberie. *Sweare to bring him an hundred pound.*

But some thing must bee taken to his feare, *Lamb fol. 169.* *Feare makes the robbery.*

If thieves assault me for my purse, and I in the flight from them do cast it down into a bush, upon hope to have it againe, if I may escape them, and they espie it, and take it away with them its robbery: For had they not put me in feare, I would not have throwne my money from me. *Cast away my purse.*

So if a thiefe doe without any expresse words

*Assault.
without
threatning.*

*Some things
must be ta-
ken.*

Fishers man.

*Gentlemens
Catons.*

*Out of sight
of his part-
ner.*

words o. hreatning, onely assault a
man for his purse, who fighting with
and finding himselfe too weake, throwe
downe his purse, and the thiefe taketh
Crompt. Reports. 20. Eli2. Lamb. 268.

But something must in some sort be
ken from the person, or else the fact will
prove no robbery. For if a man doe lye
wait to rob me, and drawing his sword
willeth me to deliver him my money: and
I likewise betake my selfe to my weapon
and thereby repell him, and take him ei-
ther by fight, or by hue and cry, this will
not be felony saith *Stamford*, agreeing in
opinion with *Tenny 9. Ed. 4. fol. 26.* be-
cause he tooke nothing from mee, *Lan-
bert 269.*

A fisherman that travaileth by the high-
way with fish to sell, (*An. 26. Eli2.*) and
met on: who prayed to have fish of him
for his money, the fisherman refused to sell
unto him, and he with force and feare took
some of the fish, and gave him money to
the value and above for it, and of this the
Iustices thought good to be advised. But it
seemes to be no robberie, because he had
no felonious intent. But it may be rather
conceaved within the statute of 36. *Ed. 3.
cap. 2. & 6.* forbidding gentlemens Catons
to buy any thing against the will of the
owners.

Two thieves attempt to rob a true man
who fled from them, one of the thieves fol-
lowed him in chace: and the other thiefe
elpying another true man in the same high
way (but out of the sight of his fellow
thiefe) rode towards him and robbed him
and then returning to his fellow thiefe.

This was adjudged robberie in both the thieves: and yet one of them was neither in sight nor assented unto it. But because they both came to rob, and (at the same time) this fact was committed by the one it is worthily imputed to the other also, *Lamb. fol. 270.*

To cast money out of a window to appease thieves, saith *Crompt fol. 22* is robbery, *Lamb. 261.* saith, Burglary if done in the night time.



Burglary.

Burglars are those who feloniously in time of peace doe breake houses, Churches, Walles, Towers, or gates, for which hee shall bee hanged, although he carry away nothing. *Stam. f. 10.*

Defined.

There are foure things which must concur to make this to be felony, 1. The time, which must be in the night time, *viz.* after Sun set, and before Sun rising, and the Indictment must be *quod noctantur fregit*, *Stam. fol. 30. Lamb. 259. Fitz. Coron. 293. Stat. Wynch. 13. Ed. 1.*

The time.

2 The place may bee either publike as the Church for prayer, the walles or gates of a towne, for defence; or a private house and then it seemes to bee no burglary unless some person be at that time within it. because the law in this case holdeth the place and the person together, *Lamb 260*

the place.

*see page 143
some person
in it.*

If

If a man be absent some time of the night and no person in it, its burglary, *Cook lib. 4. fol. 40.*

The manner.

3 The manner partly in the breaking of the house, partly in the entering into the same, For if a man breake an house to doe a felony, and enter not, it will be no Burglary. *Stamf. fol. Dyer 99.* But it seemeth, *Aff. 27. Pl. 38.* that he which is taken in the attempt (only) of a Burglary, shall be hanged for it, although he have not put any thing in execution throughly, *Lamb. pag. 261.*

The end.

4, The end and intent for which the Burglar commeth, must of necessitie bee either to kill, or to rob some person, or to doe some other felony, *Aff. 22. Pl. 93. Lamb. 264.*

Stable.

Now although this offence be not committed in the very bodie of the dwelling house, but in a stable that is parcell thereof and neare unto it, it will bee burglary, *Brooke Co-on 180* And so if it bee in a barne or in any other out house that is so adjoyning, *Lamb 260.*

Barne.

Colledge.

Each Colledge in the Vniuersitie, each Inne of Court and Chancerie, is but one house in this respect, so that if any chamber or lodging be broken in the night, and albeit no person be in it, if so be any person be in any part of the whole colledge or inn of Court, its Burglary *Lamb. 260. 261.*

Enter.

False Key.

If he breake the house and doe not enter, it is not burglary: but yet to turne a key in the doore, to come into the house by meanes of a false key, to put his hand over the threshold and discharge a Dagge, to put back the lease of a window, or with a crooke

Crooke, to hooke cloathes out of a window, or if any be in the House, and for feare shall cast money out of a window to appease thieves, have beene all taken for burglary, *Lamb. 261. 262.* Robbery, saith *Crompt.* So also to draw a latch and enter, *Lamb. 262, 263.*

If thieves come to a Towne by night with hue and cry, and shall pray the Constable to make search for felons, and while they goe with him into an house to search, the thieves binde and rob both the Constable and good man of the house, in such a case the entry shall be deemed felonious from the beginning. *Lamb. 263.*

If a man should break and enter an house by night, purposing only to beat a man, that is but trespassse, *Stamf. fol. 30.* But if it be to kill him it is burglary, although he did not so much as touch him, *Fitz. Co. 267.* And so it is also if the purpose bee to rob, though he take away nothing, *Fitz. Co. 185.* *Ass. 22. pl. 39.* But if it be to commit a rape some doubt because it was not felony at the Common Law. *Lamb. 264.*

Larceny.

Cum autem sic qui sequitur, potest ab initio agere civiliter vel criminaliter pro voluntate sua. Potest enim rem suam petere ut amisam, cum testimonio proborum hominum. Et sic rem suam consequi, quamvis furatam, & si ille qui se situs fuerit in hoc ei non obtemperabit potest accersere, Et petere eam ut furatam, sed non e converso, *Stamf. fol. 28. Doct. & Student. fol. 163.*

H

Breach

Breach of Prison.

Stat. 1. Ed. 2. de frangentibus prisonem.
S Before this Statute, if a prisoner had broken a prison, he should have been hanged for it, although he were imprisoned but for trespassse, *Stamf. fol. 30. G.*

Now then, every one who is under arrest for felony is a prisoner, as well out of the Gaole as within it, and albeit hee be but in the stocks, in the street, or out of the stocks in the possession of any one who hath arrested him, and if he makes an escape, it is a breaking of prison in the prisoner. For imprisonment is nothing but restraint of libertie.

The same Law if a man take a Church for felony, and make an escape thence, *quis fuit quodammodo in prisona*, i. under the keeping of the Towne, *Lamb. fol. 30. G. D.*

If a Stranger doe it, hee is within compassse of this Statute, because by the common Law, it was a debruement in the stranger and felony. And it is felony also at this day in the prisoner, who escapes by meanes of such breach made by a stranger, *Stamf. fol. 30. b. E.*

But if a Gaoler or any other who hath a prisoner under arrest, shall suffer him to go at large, it is no felony in the prisoner, but all the felony in such a case resteth in him who suffereth him to escape, and that by way of voluntary escape, (and not by way of debruement) which is felony in him who suffereth him to escape, *Stamf. folio 31. A.*

*Arrest.
 Stocks.
 Possession.
 Arrested.
 Escape.*

Sanctuary.

Stranger.

Escape.

Gaoler.

Escape.

But it is otherwise of a negligent escape, *Negligent*
or that is felony in the prisoner that e- *Escapes.*
scapes, and no felony in him out of whose
custodie he doth escape: Because the pri-
soner in doing thereof doth breake prison,
Stamf. fol. 31. A.

Note, frangere prisonam, is intended al-
well of a Rescus as of debruement, as when
the prisoner is under arrest, and a stranger
will feloniously take him out of the pos-
session of him that arrested him. This Res-
cue is a breach of prison, as well in the fe-
lon that thereby doth escape, as in him
who caused the escape. *Stamf. fol. 31. B.*

Rescus.

But if a stranger shall disturb the arrest-
ing of a felon, such manner of Rescue *Disturb the*
seemes to bee no felony, *Fitz. Justice of* *arrest.*
Peace, fol. 23. such arresting being distur-
bed saith he is felony, although hee were
rested in deed, *Quere. B.*

Note, the returne of a Rescue of a felon
(by the Sheriffe) taken out of his posses-
sion will not serve as an indictment to put
the partie to answer thereupon. And the
reason is, because Stat. 25. Ed. 3. cap. 4.
De predictis saith, none shall bee im-
prisoned or outed of his freehold, without
presentment, or originall writ, *Stamf. fo-*
lio 31. B.

Answer.
Rescus.

The Statute is further, *Nisi causa pro* *Trespasse.*
qua captus, & imprisonatus fuerit, satis ju-
dicium requirit. And therefore at this day
if one be attached and taken for trespasse
and he that is attached escape, or be rescu-
ed by a stranger, it is but fineable, but the
fine shall bee according to the qualitie of
the person from whom such rescue is made,
and therefore if a Justice assigned, arrests

Present-
ment.

Fine.

Qualitie of
the person.

Rescue.

a man that shall make an affray before him, and a stranger rescue him, in that case aswell the prisoner as he that made the Rescue shall be disinherited, and perpetually imprisoned: because the attachment of the Iustice was in Law, the attachment of the King himselfe. But it seemes if such Iustice makes an arrest when hee is out of his place, it is but fineable, and is no more then if the Sheriffe had arrested a man, *Stamf. fol. 31. B.*

*Preter tense
present tense*

These words (*Iudicium requirit*) shall be intended aswell in the preter tense, as in the present (*i.*) as well of judgement given, as of judgement to be given, and therefore if a man be rescued from the gallows, or when he is going to Execution, it is within the compasse of this Statute, *Stamford. fol. 32. C.*

*Gallows.
Execution.*

The words of the Statute are further, *nisi causa pro qua &c. tale Iudicium requirit si de illa fuit convictus.* By this it seemes it is not materiall if the prisoner who escaped be or shall bee attainted of the felony for which he was imprisoned if he were committed for felony at the time of the detainerment. *Stam. 32. D.*

*Attainted.**Tried before
the principle*

And a stranger that had rescued one that was indicted of felony, was indicted and arraigned therefore piently, before the principall felony was tried, and found *Stamf. fol. 32. a. B.*

*Confession,
Coroner.*

Note that the Confession of breach of Prison before the Coroners, is an attainer in it selfe without any more, *Stamford. fol. 32. H.*

Escape.

One I. R. taken upon suspicion of Larceny was by the constable delivered unto the

the possession of I. W. and escapes out of his possession for want of good keeping, and I. W. indicted for the escape, *Ass. 42. Pl. 5.* and not the Constable.

Voluntary escape. pag. 142,

THere are two manner of escapes, 1. Voluntary, and 2. Negligent; Voluntary is when one hath arrested another for felony, or other crime, and doth afterwards suffer him to goe whether he will, this letting of him goe is a voluntary escape.

And if the Arrest of him who escapes were for felony, it shall bee felony in him that suffers him to escape, if he were arrested for Treason, it shall be treason, if for trespassse it shall be trespassse. *Stram. f. 32.*

Escape for Petty Larceny, *Pult. de pace, & fol. 44. f. 10. Cromptons Iustice of Peace, fol. 39. b.* saith, it is not felony, because petty Larceny is not felony of death, neither is it in case of *Se defendendo* nor *per infortunium*.

Felony.

Treason.

Trespasse.

Petty Larceny.

Cr. 32. 39. 4.

Negligent Escape.

Negligent escape, is where one is arrested and afterwards escapes against the will of him that arrested him, and is not freshly pursued and taken before the pursuer loseth sight of him.

This shall be judg'd a negligent escape, not with.

Pursued.

Lost sight.

Escape.

withstanding he out of whose possession he did escape takes him againe after hee hath lost sight of him, *Stam. fol. 33.*

And the same law it is, if the taker of him, loose not sight of him, if it be so that he kills him in the pursuit. And the reason thereof is, because, by such negligence the prisoner cannot be attainted of felony, and so the King shall bee at losse, *Stamford 33.*

*Kill him.
Assaunted.*

*Gaoler.
Licenceth.*

If the Gaoler licenceth his prisoner to goe unto another Towne, and come againe, it is an escape, because the prisoner was found out of the bounds of the Prison, *Stamford fol. 33.*

Maine prise

One who is not maynprizeable is let to maine prise, it shall bee said to bee a negligent escape in him who letteth him to Mainepriſe, *Stam. fol. 33. b.* But by Statute 1. and 2. of *Phil. & Mar. cap. 13.* the Iustices of Gaole delivery may fine him.

Trespasse.

Escape *Non ad iudicabitur versus eum qui commissus est prisona pro transgressione.* For by the Common Law no escape shall bee said but of such a one as is in prison for felony, And yet in *Fitz Coron. 430. 431.* escape was adjudged for one who was in prison but for petty Larceny, *Crompt. fol. 25. contra.*

Petty larceny.

*Sheriffe.
Capi Corpus*

The Sheriffe returnes upon a *Capias* to arreſt one for felony *capi corpus*, and had not the body at the day, in this case hee shall be amerced at 100. shillings, because upon this matter of record it shall be taken as an escape, *Lamb. Stamf. fol. 33.*

*Amerced.
Record.*

A man being arrested upon suspicion of felony suffered to escape, and the Constable and others in whose keeping, &c. put to

to answer, *Crompton Iustice. folio 26. a.*
 43: *Ed. 3. fol. 36.* Suspicion.

Escape without arrest.

IF one be murdered in a Towne by day,
 and the murtherer escape and is not
 taken, or arrested by the towne, those Towne,
 of the Towne shall bee charged with this
 escape, *scilicet*, they shall be amerced for it.

The same law is, if a man be slaine by
 misadventure by another, or *se defendendo*,
 and escapes. Because they are not to judge
 whether it be felony or not.

And as it is of a towne not walled by
 day, so it is for a City or walled Towne by
 night, for in such case bee a man slaine by
 day or night, and the murtherer escape, the
 City shall be amerced, because by Statute
 of *Winchester Anno 13. Ed. 1.* a City or
 walled Towne must be shut from sun set to
 sun rising. And this Law is confirmed by
 Stat. 3. *H. 7. cap. 1.* If any be slaine in the
 day and the murtherer escape, the towne
 shall be amerced. And the Coroner and
 Iustices of the peace have power to en-
 quire of such escapes and shall certifie the
 same into the Kings-bench. And so note
 here, that an escape shall be adjudged, and
 yet there is no arrest proceeding, *Scam-*
fold. fol. 34.

Charged,
 Amerced,
 misadven-
 ture.

se defenden-
do.

City, 1

Sun set.
Sun rising.

Coroner.
 Iustice of
 peace.

Enquire.
 Certifie.

Vpon what persons an Escape shall
be charged.

Bayliffe.

Sheriffe.

Inhabitants.

*Sanctuary.
Hundred.*

*Towne.
Hundred.
Countie.*

*The towne to
be charged
with a priso-
ner,*

*Rescued.
Escape.*

THe Sheriffes Bayliffe arrests one for felony in a towne, and carries him to prison, and the inhabitants of the towne goe with the Bayliffe to assist him, and the thiefe in going escapes, in this case the escape shall be adjudged upon the Sheriffe; *Stamf. fol. 22.*

But it is otherwise if the prisoner be delivered to the inhabitants of the towne to carry him to prison.

One is arrested for felony and brought to the hundreds Court, and they bid him goe, and seek one to warrantie, viz. one that will vouch the sale of the goods to him, and he goes and takes Sanctuary and abjures, and it was adjudged an escape upon the hundred.

If a man be slaine out of any towne, and the murderer escape, the hundred shall be charged. *Stamf. fol. 34. b.*

Or if the towne bee not sufficient to answer the amercement for the escape then the hundred shall bee answerable, and for insufficiency of the hundred the Countie shall be charged. *Stamf. fol. 34. b.*

If the Constable brings a man to the Gaole, and the Gaoler will not receive him the towne where the Constable dwells ought to be charged with the keeping of him untill the Gaole deliverie, *Stamf. fol. 34. b.*

If a felon bee rescued from the Sheriffe, an escape shall not bee adjudged against him: because he hath no remedie, *6. H. 7 fol.*

fol. 13. 10. Hen. 7. folio 26. 18.

If one bee slaine in the evening and escape, (by the common law) the towne shall be amerced, *Cooke lib. 7. fol. 6.*

Escape.

If traitors break a prison it shall not discharge the Gaoler of escapes, but of the King's enemies, it is otherwise because hee can have no remedie, *Cooke lib. 4. fol. 125. Brevelies Case.*

Traitors.

If a felon escape the Sheriffe shall be answerable for it, and shall be punished for a negligent escape, if it were without his privilege. But the Gaoler for a wilfull escape shall be adiudged a felon; *Dals Sheriffe. f. 187. b.*

Sheriffe.

Negligent.

Gaylor.

Wilfull.

A felon delivered to the Constable and foure others, and suffered to escape, the Constable and the foure others were indicted, *Crompt. Iustice &c. fol. 26. a. 43. Ed. 3. fol. 36. accords.*

Constable.

A man is sent to prison by foure of the Towne, and the prisoner makes resistance, and is slaine by them, it is an escape, and all the towne shall be amerced, *Crompt. Iustice, fol. 26, accords.*

Foure men

do convey a

felon.

In the Articles of enquire in the Kings bench, one is of prisoners that escape out of the keeping of the Constables of a town by negligence of keeping, where and when and out of whole keeping and what they were, *Ass. 271. pl. 44, in the articles of enquiry in the Kings bench.*

Constable.

How

How an escape shall be tryed and Iudged.

*Record.
Fait.*

Ready.

Ordinary.

Scire facias

Ordinary.

Record.

*Coroners
rolle.*

NOte there is a prisoner by matter of record and prisoner by matter in fait : prisoner by matter of record is when one being present in Court is committed to prison by the Court, and in this case if the keeper of the prison hath not the prisoner ready at all times, when the Court demands for him, nor can shew reasonable cause, wherefore he cannot produce him forth, the Court shall adjudge an escape upon the keeper, without enquire, *M. 1. R. 6. f. 33.*

The same law is, where one is committed in the Kings bench to the Ordinary as Clerke, without making his purgation: and is afterwards taken and brought into the Kings bench, and all this matter there declared, and the Court demands him, if he be the same person, and he sayes yes. In this case the Court shall award a *scire facias* against the ordinary to answer why an escape shall not bee adjudged against him, *27. H. 6. 7.* Contrary if he had beene committed to the Ordinary by another Court than the Kings Bench: for in such case without having the Record before them they could not grant the *scire facias*. *Stamf. fol. 34.*

The same law is if it be found in the Coroners roll, that one fled to the Church, and no abjuration is mentioned in the roll in this case the Court shall adjudge an escape upon the towne without presentment.

Note,

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Note, that to such as are prisoners of re- *Traverse.*
cord, the keeper of the prison cannot tra-
verse the escape, but must confesse and a-
 voyd it, as by saying the prison was burnt or
 broken by enemies, or to say. that he who
 is supposed to bee escaped is not the same
 prisoner that was committed unto him,
Stam fol. 35. a.

Prisoner by matter in fait, is when one is *Arrest.*
 prisoner by arrest only, either of the Sheriff
 Constable, or any other, there the escape
 shall be presented before hee shall answer *Iustice of*
 to it, *West. 1. cap. 3.* *peace en-*

Iustices of peace by statute 1 R. 3. cap. 3 *quire.*
 may only enquire of the escapes of such as *Arrested.*
 are arrested, and imprisoned for felony,
Stamford 35. and by Stat. 3. H. 7. cap. 1.
 they may enquire of the escapes of a mur-
 derer and not taken by the towne.

And note that for an escape which is not *Fineable.*
 fineable but amerceable, he or those who *Amerceable*
 are charged shall not traverse the present- *Traverse.*
 ment, *Quia de minimis non curat lex. Stam.* *Present-*
fol. 35. b. *ment.*

The penaltie of an escape.

THe penaltie of an escape (if it bee *Voluntary.*
 voluntarie) is the forfeiture of all
 that a man may forfeit, because it is
 felony, *Stamf. fol. 35. b.*

The forfeiture of a negligent escape is but *Negligent.*
 fineable. *Never ar-*

The forfeiture of an escape of him who
 was never arrested is but an amercement,
See Stat. 3. H. 7. 1. *rested.*

But in these forfeitures is to bee under-
 stood

*Felons.**Constable.**Time and day.**The time.**Fine.**Voluntary.**Heinous offences.**Heresie.**Ordinary.**Arrests.**Goods.**Lands.**Renter.**Iustices of**Peace.**Negligent fine. 100. l.**Suspicion.**Hue and cry.*

stood the escape of felons and not others for if one strike another and be arrested by the Constable, and by him let goe, and afterwards the partie who was stricken dye within the yeare and day, yet this shall not make the Constable a felon, because it was not felony at the time of the escape.

But yet hee shall make fine to the value of his goods, because the escape was voluntary, and upon an heinous offence before committed.

The same Law is, where a man is arrested for heresie, and hee escape or breake prison before hee bee acquitted before the Ordinary, his goods and chattels which he had the day of such arrest and forfeited to the King, and the profits of his land, from the day of arrest untill he shall render himselfe to the person from whom hee escaped, and Iustices of the Kings bench, Iustices of the peace, &c. have power to enquire of all such escapes and breaches of Prison, by *Stat. 2. H. 5. cap. 7. Rep. 1, Ed. 6. 12. 1. Elisab. 1. Stamf. folio 35. b.*

Note, that the negligent escape of one attainted of felony, the fine is an hundred pound, but if hee bee indicted and not attainted an hundred shillings, *Quere.*

If he be taken but upon suspicion of felony whether the escape bee dispunishable *43. Ed. 3. 36.*

By the Statute of Winchester, 13. Ed. 1. if a man be arrested in the day time, and the thiefe escape, and not taken within halfe a yeare the Towne or Hundred (respectively) shall answer the partie robbed and damages. *Stam. fol. 35. 36.*

A man

A man fled to an House having committed felony, and another came to the house being shut and attached him by word only, and was never in his custody: and he after escaped, this is not any escape *Ass. 27. pl. 9. Et sic vide* it is no arrest, *Crompt. justice fol. 26.*

House burners.

Such as burne Houses feloniously, are felons by the Common Law.

Barnes.

One was indicted for burning of a barne feloniously in the night time; and because it was adjoyning to a dwelling house, it was held to be felony by the Common Law, and the partie was hanged, *M. 11. H. 7. fol. 1. and Stamf. fol. 36.* So to burne a mowe of corne, or in stacks, *Britton. fol. 16. Stamford. 36. Crompt. 23. b.*

*Corne in
Stackes.*

Misprisions.

Misprision is properly when any one knowes that another hath committed treason or felony, and will not discover it unto any Magistrate, but conceales it. And *2. R. 3. f. 10.* it was agreed, that when any one is attainted of misprision, or of trespassse, the Iustices before whom he is attainted shall take surety and pledges for his fine, and afterwards shall asseesse it by their discretion, and not the King himselfe, *Stamf. fol. 37. b.*

Defined.

*Surety.
Fine.
King.*

*Money.**Treason.**Stranger.**Misprision**Forfeiture.
in misprison-
on.**Strike**Judge.**Lands.**Chattels.**Hand.**Juror.**Knight.*

If false money be made within the realm or any member thereof, and a stranger doth utter the same &c. It is not treason in the stranger, because the statute 25 *Ed. 3. de proditionibus*, doth not extend therunto, for the Statute is, if any doe bring false money into this Realme, in such case although it be not treason in the stranger. yet it is misprision *ut patet. 3. H. 7. fol. 10.*

And in these cases of misprision he shall forfeit but his goods; and his lands but for terme of his life, and according to some but the profits of his lands, and shall bee perpetually imprisoned during his life, *Stamf. fol. 38.*

And 22. *Ed. 3. fol. 13.* one did but draw his sword to have stricken a judge assigned sitting in judgement, and being found guiltie, had judgement to forfeit his lands and chattels, and his right hand to be cut off.

The like law to strike a Juror in the Iustices presence, *fol. 38.*

If a Ribau'd strike a knight, or any other honourable man, hee shall loose his hand with which he stroke him, *Stamford fol. 38.*

Accessaries before.

Defined.

IF one shall procure or command another to commit a felony, but shall not be present when the other doth it, this commandment, or procurement is but an accessary, *M. 10. Ed. 4. fol. 14.* For if hee be present at the committing of the felony he is a principall, *21. Ed. 4. fol. 71.*

All

All such as come in company in any place, or any assembly where any will is committed, be it homicide, robbery or other trespassse, every such one shall be taken a principall, doer albeit he went aside and did nothing, *Stamf. f. 1. b.*

Principall defined.

But if one happen to be present when another is slaine, or when a felony is committed, and came not in company of the felons, neither was of their confederacy, albeit he did not resist or disturbe the felon, nor raise hue and cry, yet he shall neither be principal nor accessary, for it is not felony in him, but fineable as trespassse, *Stamford. fol. 41. b.*

No misprision but fineable.

If I command one to apprehend another and he goeth from me, and takes him and robbeth him, If I be absent when he doth it, it is no felony in me, because he exceeds my command: and my commandement might have beene performed without robbing of him.

Exceeds Command.

But if I command one to beate another and hee beat him to death, it is felony in me that commanded, because it is hard to beat a man so, that hee may be sure hee will not die, and therefore in such a case I am accessary to him that killeth him, *Stam. fol. 41.*

To beate.

An Adulterer doth counsell the mother to kill her child when it is borne: he is an accessary before, though the childe be not borne, *Cooke lib 7. fol. 2. George Parkers Case, Dyer fol. 186. pl. 3.* in which place Parker was indicted by the name of George Parker Yeman, and the note of Dyer saith afterwards, that albeit hee was a Clerke, yet he was hanged *pro procuratore Prædictæ.*

Clergie. Parkers Case. p. 32. 53

Pradista. But it appeareth not of record if he was a Clerk.

*Another
manner,*

Albeit the chiefe offender doe not accomplish the fault altogether in the selfe same sort it was before hand agreed and plotted, yet if any felony fall out by that attempt, either against the same person or another, yet hee shall bee taken to bee accessary: As if a man hire one to poyson another, and he killeth him with a Sword, this procurer is accessary to the murther. Because the other evill is but a sequell of the former, which was commanded by him, and attempted by the other, *Lamb.* 286. 287.

*Procure to
beat one.*

So if one procure another to kill a man in the field, or at such a time and place, and he killeth him in the house at another time and place than was agreed. Because their wicked purpose is effected, though by another meane or circumstance than was set downe betweene them, *Plod. Com.* 475. *Lamb.* 287.

*Burne house
steale.*

But if one doe conspire with another, that the one shall burne the house of A. and he burneth the house of B. or that he shall steale the horse of A. and hee stealeth his Oxe, or that he shall rob A. in the high way, and he robbeth him burglarily in the night season in his house, the other is no accessary, for that they be in other things, or of other kinds then were intended. *Plod. Com.* 475.

Rob.

Other things

And which is more strange, if the husband conspire with another to poyson the wife, and he for that end procureth and bringeth poyson to the husband who tempereth it with an apple, and giveth it to his wife

of recon- wife, and the wife doth deliver it to her *Poyson and*
daughter, who eateth it and dyeth, Yet *ther.*

not as that other person is no accessary to the mur-
der the fel- ther than the husband committed, because
dred and it is a distinct thing from that which hee
by that purposed. *Plod. Com. 476. Sanders Case.*

Now in all these cases of accessaries be *Continue his*
fore, it is necessary that the commander, *mind.*
procurer, or conspirer doe continue his
mind and purpose untill the felony be fully
done. *Lamb. fol. 288.*

But it is otherwise if he shall repent him
of his malicious mind, and thereof give no-
tice to the other, and withall charge him
that he make no such attempt, and hee
doth neverthelesse bring the same to effect,
then such commander or procurer is no
more accessary to the fault, then if he had
never imagined or thought upon it, *Plod.*
Cym. 476. Lamb. fol. 289.

Also *Lambert* was of opinion, that if a
man know a felony intended to be commit-
ted, and doe conceale it, and thereby suffer
it to passe, and it be effected, he cannot be
made an accessary thereby, unlesse he have
uttered some consent, or given some signe
or approbation of his allowance of it. *Know of a*
felony inten-
ded.

But rather that his concealing is a mis- *Misprision.*
prision (or contempt) for which hee shall
be fined: even as if it hapned him to bee
present at the doing of a felony (whereof
he neither had knowledge, nor come
therefore, nor gave aid thereunto) and
would neither disturbe the felony, nor le-
vie hue and cry after him, *Stam. 40. Fitt.*
Cron. 393. Lamb. 289.

Disturbe.
Hue and cry.

Petty Lar-
ney.

No accessory to petty Larceny, as *Humphry Davanpore* said at *Exon Assizes*. 10. *March, An. 9. Caroli.*

Accessaries after.

Disu.

IF one receive a felon well knowing the fact which hee hath committed, and doth favour or aid him, by this he shall be said to be an accessarie.

Suit.

But we must distinguish of aid. For if he aid him by his good word, and sue for his deliverance, or send a Letter in his behalfe, this makes him not accessarie to the felony.

Letter.

Not attain-
ed.

And this definition of an accessarie, extendeth only to such as are accessaries to a principall which is not attained, *Stam. fol. 41. b.*

For after the attainder if hee had received him, he seemeth to be an accessarie although he know not of the felony committed, if it be in the same Countie, *ib.*

Another
Countie.

And note, by the common Law, if one commit felony in one Countie, and before his attainder, another receiveth him feloniously in another Countie, that was no felony in the receiver for want of tryall; because those of the Countie where the accessarie offended (before Stat. of 2. and 3. Ed. 6. cap. 24.) could not have consience of the principall offence committed in another Countie, *T. 33. Ed. 3. fol. 17. Stamf. fol. 41. b.*

Receive
goods only.

Note, a man shall not bee, accessarie for receiving of the goods only if hee doe not

ceive the felon himselfe, *Stamford fo-*
lio 43. b.

If a man doe upon hue and cry arrest a thiefe and doe then with an evill minde take the goods and so let the felon goe, hee is to be arraigned for it as an accessarie to the felony: if not as a principall felon, *Ass.* 27. Pl. 62. *Lamb.* 290.

If a man pursue and take a felon that hath stollen his goods, and suffer the thiefe to goe at large, hee is no accessary thereby, for he may *agere civiliter*, or *criminaliter*, at his owne pleasure, but if he take money of the thiefe, to the end he shall not give evidence against him, whereby the thiefe escapeth, then hee is become accessarie to the felony of his owne goods, because it is done with a mind to comfort a felon in his evill doing, *Lamb.* 290.

To receive, harbour, or relieve with money a man that is bayled for felony, and bound to appeare for his tryall is no accessary, neither will it make a man accessary to receive or buy the goods that hee knoweth to be stollen, unless hee doe receive the thiefe that stole them, 9 *H.* 4. 1. *Fitz.* *Coron.* 125. & 208. *Lamb.* 291.

As one may be accessary to a principall felon, so may another bee accessary to that accessary also, for if one do feloniously receive or comfort him, that is an accessary, he is fallen into an equall danger with him, and is called an accessary to an accessary, *Ass.* 26. pl. 51. *Fitz.* *Coron.* 196. *Lamb.* 291.

In the judgement of an accessary, nature is not allowed her excuse, For *Fitz.* *Coron.* 427. a felon fled to the house of his naturall

Take goods.

Accessary.

Accessary to his own goods.

Bayled.

Buy stollen goods.

Accessary to accessary.

Brother.

Shut the
doore.

brother who shut the doore against him that pursued the felon, and conveyed him out of the house, by a back doore, where by he got to a Church, and this brother was adjudged an accessary for it, *Lamb. 491*

Wife.

But a woman cannot be accessary to her husband, though she doe both receive and comfort him, and knowes of the felony, and also cover the fault that he hath done. *Lamb. 391. Fitz. Coram. 383.*

Generall
Rule,

In all cases of an accessary after, this thing is requisite that the fact to which he is accessary, be a felony at the very time he becometh an accessary to it. For if a man doe give a mortall wound unto another upon the first day of August, and a third person knowing thereof, receaveth him two or three dayes together, and letteth him goe: and then afterwards he that was stricken dyeth of the wound within the yeare and day: yet this receipt maketh not the other accessary, because the principall fact was then no felony, *Lamb 292.*

Both principall and accessary.

If a man be charged as a principall felon, and upon tryall bee acquitted thereof, yet may he be an accessary thereto, after the offence, though not before: *Fitz. Coram. 200 and 463. Stam. 105. Lamb. 292.*

Approver.

To receive an approver knowing him to be so) will make a man accessary to the felony that he hath confessed. But that a man shal be accessary to a man not attainted in the same Countie, upon record, is extreme and doubtfull, *Lamb. fol. 293. 294.*

Accessary.

The Principall shall be first
attain^ed.

THere be two manner of attainders,
the one upon appearance, 2. the o-
ther upon default.

*Two sorts of
Attainders.
Accessary.*

1. The attainer upon appearance is,
1. By confession, 2. By Battaille. 3. By verdict
2 The attainer upon default is by proces.

*Plead to is-
sue.
Enquest.
Attainted.*

By the aneient law, the accessary shall
not be put to answer, untill the principall
were attained, 44 Ed. 3. f. 7- But now
the Law is altered. For now whether the
principall doe appeare or not, the accessary
(if he appeare) shall answer.

*Processe.
De sine.*

But if he plead to issue the proces shall
cease to be awarded against the enquest un-
till the principall appeare or be attained
by processe, but yet this processe against
the enquest shall not cease except the ac-
cessary will. For if the accessary will de-
sire processe against the enquest before the
principall bee attained, he shall have it,
because none is damnsified thereby but him-
selfe. And if he be thereupon attained or
quitted, it is good, and shall not bee ar-
raigned againe. For the taking of the in-
quest is not erroneous. *Stam. fol. 46. b.*

Enquest.

But if both appeare, *scil.* the principall
and accessaries then the principall ought
first to answer, and afterwards the accessaries
For the principall may give such an answer
that the accessaries may not be put to answer
untill the

Both appear

Answer.

Tried.

the answer of the principall be tried, and that is where the principall doth not plead directly to the felony but another plea, as

Another plea

if hee plead *autrefois acquit* &c. In this case the accessary shall not bee put to answer untill the issue be tried, as *9. H. 7. f. 19.*

Issue tried.

But if the principall doe plead to the felony, then the accessary shall plead presently after, *Stamf. fol. 46. b.*

Plead.

Note, when I speake of principalls, you

All principals appear.

must not understand all the principalls. For if diverse bee sued as principalls, and some doe appeare and some doe not, yet the enquiry shall carry till all the principalls come, or shall be attained by processe, if

Some only.

it be so that he be appealed or indited as accessary to them all, but it is otherwise, if he bee indited but as accessary to some of them. For in that case it sufficeth to have those principalls only to come or to bee attained, to whom he is indited as accessary, without having regard to others, *Stam. 47.*

**Dye after attainer.
Record.**

Also it seemeth, if the principall after this attainder shall dye: and the Iustices before whom the accessary is sued, have the Record of his attainder before them, that then they may proceed with the accessary, els not, *Stamf. 47.*

**Mute.
Errors.**

But put case the principall come and stand mute, or shall challenge above 36 yet the accessary shall not take advantage of these errors, *Quare, Stamf. fol. 47.*

Where

Where the acquitall of the principall
shall discharge the accessory, and
where not.

IF the principall be found not guiltie, the
accessary is thereby discharged. For
ubi est factum nullum, ibi foris nulla.

Or if the principall cannot be tryed, but dy-
eth in prison before he be attainted. But it
is otherwise if he dye after he is attainted.

*Non Culp.
Dieth before
attainted.
Pardon.*

If the principall procure his pardon; For
when the life of the principall is given him
any manner of way by Law, the felony is
extinct in his person, and by consequence
acquitted. And so it shall bee where the

principall hath his clergie, 3 H. 7. fol. 1.

sed distinguendum est, in the case of Cler-

gie, *scil.* whether he be Clerke convict, or

Clerke attainted, For if hee bee Clerke

Attainted, by the ancient bookes he

shall be hanged, because the principall in

such case can never make purgation: But

otherwise it should bee if he were but Clerk

convict, because a Clerk convict may make

purgation, And therefore they usually doe

bail the Clerk convict, untill the principall

hath made his purgation, *M. 13. Ed. 4. fol.*

3. And upon his purgation to discharge the

accessary. *Sed quare,* for now he shall now

make purgation, but shall forthwith be de-

livered, by Stat. 18 *Eli2. cap. 3. Stat. f. 48.*

If the principall have clergie before

judgement: (he is called clerke convict)

the accessory is discharged thereby, *Cooke*

*Clergie.
1 Convict.
2. Attain-
ted.
Purgation.*

Bayle

*Clerke con-
vict.*

Maine-

Maineprise and Baile.

Accessory.

THe accessory is repleviabie by the Common Law untill the principal be attainted, but not afterwards.

Stamf. fol. 71. West. 1. cap. 15. Ed. 3. 1.

- 1 Vclawes.
- 2 Provers.
- 3 Abjured persons.
- 4 Taken with the manner.
- 5 Breakers of prison.
- 6 Openly defamed, as by hue and cry.
- 7 Such as are appealed by provers living.
- 8 Treason.
- 9 Murther.
10. Houle burners.
- 11 For false money.
- 12 Counterfeiting of the Kings seale.
- 13 Excommunicate persons.
- 14 For manifest offences.
- 15 The Kings command.
- 16 The Iudges command.
- 17 *Maihem*, If it be grievous and mortall. *Pulton de pace, fol. 16. sect. 63. T. 6. H. 7. fol. 1.*
- 18 Burglary. *T. 6. H. 7. f. 1. Pult. de pace, f. 16. 63.*
- 19 If a man be attainted of felony by verdicts he is not bayleable. *Pulton fol. 174. sect. 12. 15. H. 7. fol. 9.*
- 20 If a man be found guiltie of Homicide before the Coroner. *Dal p. 275*
- 21 If a man confesse manslaughter upon his examination. *Dals. 272.*
- 22 Nor in Robbery, *T. 6. H. 7. f. 1.*
- 23 Nor he which is indited of felony, *Lamb. 347. Aff. 41. pl. 30.*
- 24 Nor he which confesseth the felonie

Not Bayleable.

Not Bayleable.

nie, whereof he is accused. *Lam. p. 347*
 25 *Regula*, The Iustice of peace cannot meddle with the bailement of any prisoner, except he be prisoner for such a cause, whereof the Iustices of peace bee competent Iudges.

Lamb. p. 347. 348.

26 Accessary to murder. *Co. of bail. f. 13*

27 Nor suspects of mur. *Co. of bail. p. 13*

28 Nor accessary to felons attainted. *Coke of Bayl p. 15.*

29 If a prisoner after he hath pleaded not guiltie bee attainted by verdict that he killed a man, *se defendendo*, or *per infortunium*, yet hee shall not be bailed, *Dalt. 274. Stamf. fol. 15. Stat. An. 6. Ed. 1. cap. 9.* but this Statute I conceive meaneth by writ unto the Sheriffe, *Quare.*

31 If a man be accessary unto two, and the one principall is attainted, though the other be not, yet the accessary shall not be bailed, *Dalt. 275 4. Ed. 3. f. 28. Stamford f. 17. c Brook mainprise 58.*

32 Nor in manslaughter can a man be bailed by Statute 3. H. 7. cap 1, which saith, that in appeale of murder, or death of a man (where bail lyeth not) but *per infortunium* or *se defendendo* the appealeant may make attorney to present his appeale.

But Sir E Cooke in his Treatise of bayle and mainprise, p. 5 and also *Dalt. 272.* And *La. p. 346. 347.* are of opinion that for manslaughter a man may be bailed, for saith *Lam. the Stat. of 1. & 2. P. & M. c. 13* seemeth to

dis-

distinguish these words death of a man that are read in Stat. of West. 1. 15. and in this place to restrain them to murder only, seeing it doth admit the slayer may be lawfully bailed, which also is the common practise, saith hee in that behalfe, *Lamb.* 346. 347.

Sir John
Walter Lord
Chiefe Baron
at Exon as-
sises. An. 4
Caroli.
In Glawills
case.

Other are of opinion that a man is not bayleable for Manslaught er, by Stat. 1. and 2. P. & M. cap. 13. the words of which statute doe runne thus. Any person arrested for man slaughter or felony, being bailable by law (though they are bayleable) shall not be bayled except by two Iustices of the peace to be present together at the time of the said baylement, which bailement they shall certifie, &c. And the said Iustices when any such prisoner is brought before them for any manslaughter before any baylment shall take the Examination, and put the same in writing before they make the same baylment, &c.

M. To. Sym.

Now they say, manslaughter or homicide is the Genus, and comprehends all kinde of killing of a man, as well murder *per infortunium, se defendendo, &c.* and if these words are to bee taken according to the letter, then may they bayle murder, contrary to the prohibition of this very statute, which doth forbid any Iustices to baile any contrary to the Statute of West. 1 cap. 15. mentioned in this statute, of 1 and 2 Phil. & Mar. 13. For manslaughter or homicide is contrary to the prohibition of the Stat. of West. 1. which saith that none shall be bayled for the death of a man, and there-

Therefore doe by manslaughter understand
 here, some particular species of manslaugh-
 ter, as homicide *se defendendo*, or *per infor-*
tunium which indeed are no felonies, and
 therefore if the rule doe hold generally,
 that Iustices of peace cannot bayle such
 persons of whom they are not competent
 Judges, they cannot baile a man that kil-
 leth another, *per infortunium*, or *se defen-*
dendo, see the rule in *Lamb. pag. 347. 348.*
 and it is certaine, that by Stat. *An. 6. Ed. 1.*
cap. 9. the Sheriffe cannot baile them by
 writ, the Iustices of Peace have a Commis-
 sion to heare and determine felonies, but *se*
defendendo, and *per infortunium*, and not fe-
 lonies, and therefore they cannot heare
 and determine such homicides or man-
 slaughters being not contained within their
 Commission. *Lamb. p. 550. Crompt. Iust. of*
peace, fol 70

These are Bayleable by West. i. 15,
 2 Mar. 13.

- Bayleable
1. Indited of Larceny before Sheriffs.
 2. For light suspicion.
 3. For petty Larceny under twelve pence, if not guiltie before of some felony.
 4. Nor guiltie of the receipt of felons.
 5. Nor guilty before as accessory.
 6. Or guiltie before of some other trespasse, for which by the law he might have dyed, as of house burning, &c.
 7. Or appealed by provers after the provers death.
 8. If he be no common thiefe, or de-famed.

To

Escape.

To bayle a man that is not bayleable is negligent escape.

And note, in all cases where a Statute speaks that his body shall bee imprisoned at the Kings pleasure the prisoner cannot be enlarged, or bayled untill the King declares his pleasure concerning him, as *M. 24. Ed. 3 fol. 42. Stamf. 77.*

Approver.

Note, a man cannot become an approver before Iustices of the peace, nevertheless it seemeth both reasonable and serviceable that if a felon will become an approver, that is to say will confesse his felony, and also confesse others that were coadjutors with him in doing the same felony (or in other felonies) before a Iustice of Peace that Iustice may take his confession and commit him to Gaole, and may also grant out warrants for the apprehending of others that are so accused, *Dalt. 276.*

Inditements.

Utlawed.

One was discharged of an Inditement *H. 11. H. 4. fol. 41.* because one of his inditors was utlawed of felony, before he indited him, *Stamford fol. 88.*

Concealment.

Iustices of the peace may enquire of the concealment of other enquests taken before them upon complaint made by him within the yeare after such concealment, and may amerce such concealers in discretion, by Stat. 3. *H. 7. 1. Stamf. f. 88. 89.*

Tryall what.

The tryall is that which a man hath after he is indited and not before; the tryall is the issue which is tryed upon the Indite-

Inditements.

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ment, and not the inditement it selfe.
Stamf. fol. 90.

Hurt in one
and dye in
another
Countie.

If a man be hurt in one Countie, and die thereof in another Countie, those of the Countie where he dyed may enquire of this felony; by Stat. 2. and 3. Ed. 6, cap. 24.
Stamf. f. 90. b

As the word *rapuit*, so the word *proditoria*, and *felonice* must bee put in every inditement of treason, and felony, *Stamf. folio 94. b.*

Rapuit.

The Inditement ought to be certaine in the ycare, day, and place, as also in the matter, as 8 Ed. 4. f. 3. where one was indited for that he having taken B upon suspicion of felony and afterwards *eum felonice & voluntarie ad largum ire permisit*, and did not shew for what felony. H. 30, H. 6, fol. 2. so if a man be indited for making of an hundred shillings of Alchimy, *ad instar pecunie domini regis*, and doth not alleadge what money it was, *scil. groats. or pence*, *Fitz. Inditement, 10.*

Felonice.
Inditement
must be cer-
taine, see
pag. 46.

Money.
Alchimy.

So if one be indited for a common thiefe or a common ill doer, *Ass. 22, pl. 73.* such inditements are void.

A common
thiefe.

But an inditement, *Quod A, interfecit quandam hominem ignotum*, is good *Ass. 1. pl. 7. M. 9. 6. fol. 45.* So if he be indited for stealing the goods of a man unknown. And the reason is, because this inditement is not the suit of him, who is owner of the goods, but the Kings suit, who is to have the goods, if none shall claime them. *Stam. fol. 95. b*

Of a man un-
knowne.

Words neces-
sary in an
inditement.

An Inditement, *quod felonice abduxit unum quendam*, is not good without saying *rapuit*.

& abduxit, for it may bee it was delivered him. So if he say *furatus est*, and sayes *non felonice*, 18. Ed. 4. f. 10. so to say, *Quod non carnaliter cognovit*, without the word *Rapuit*, T. 6 Ed. 3. f. 26. *Stamf.* 96. For it may be by the womans consent hee knew her.

Hears and determines.

If an Inditement of felony be presented before A. and B. Iustices of the Peace without mention of a Commission which they have to determine felonies : because all Iustices of Peace cannot determine felonies, *Stam.* fol. 96. P. 22. Ed. 4. f. 12. accords.

Certiorari.

Certiorari to remove certaine Inditements and the writ was returned in this manner, *ad sessionem tentam apud D. coram, T. de B. & aliis Iusticiariis Domini regis ad pacem in eodem com. conservand.* and not with *nec don ad diversos felonias*, &c. according to their Commission, which was by *Certiorari* removed into the Kings bench, and there adjudged to bee no recorde, because the returne is vitious, T. 12. H. 7, fol. 35. M. 2, R. 3. f. 1, accords.

Implication

Such an Inditement is not good, which must have an argument or implication to make it good, *Stamf.* f. 96. b. P. 22. Ed. 4. fol. 12.

All inditements ought to containe certainty, and therefore these things be requisite.

Name of Baptisme, Miſtery, Nupt.

1. The name, surname, and addition of the parties indited. A man may plead misnomer of his name of baptisme, but not of his surname : *Puls. de pace*, fol. 109. sect. 37. Stat. 1. H. 5. 5.

The addition of the degree or misterie must alwayes be such as the partie hath at the

the very time, but the addition of place may be of such where hee was at any time before, so that then the word *Nuper* be used with it, *Lamb. p. 490. 491. See Parkers case, f. 35.*

2. The Yeare, the day, and place, in which the felony or offence was committed, for in felony if a man were hurt above a year before it is no felony. And for trespassse against Penall statutes, the offence must bee committed within a certaine time before, See Stat. 13. *Eli. cap. 5. 39. Eli. 1. 21. Id. 4.*

Day.
Place.

If the inditement be that A wounded B. *Decimo nono die Maii anno Regis nunc. quarto*, whereof B. languished untill the twentieth day of the same moneth. *Quo quidem decimo nono die*, he dyed of the same stroke, this is faultie, because it ought to be whereof he dyed the same twentieth day, &c. *Lamb. 491.*

Day he die,

If the offence bee done in the night, before midnight, the inditement shall suppose it to be done in the day before, and if it happen after midnight, then it must bee said, it to bee done that day after. *Lambert, 402.*

Night time.

If the presentment be in the negative, or in the affirmative (rising upon a negative, as that A. hath not scowred such a sewer, or that by the not scouring thereof such a way is drowned, in these cases there needeth no yeare nor day, Because it affirmeth a present evil, *Lamb. 492.*

Sewer,

If the stroke or poysoning happen to bee in one Countie, and the death in another Countie, the inditement in the Countie where the death is shall be good, And likewise

Another
countie

wife

likewise if a man become accessory to a murder in another Countie, the inditement against the accessarie shall bee good in that Countie wherein he becommeth accessory, Stat. 2. and 3. Ed. 6. cap. 24. Lamb. pa. 493.

Note.

if a man be robbed by the highway in *Middlesex* and apprehends the thiefe by Hue and cry in *Essex*, having the goods with him, (note this) Now may this thiefe be indited of felony in *Essex*, (but not if he had not the goods about him) but not of Robbery by the highway, for he is a felon of those goods wheresoever he shall be found with them. But he is no robber by the way save only in that Countie where he committed the robbery, Lamb. 494.

2. The place must be named because the *venire factas*, in many cases must have some hundreders upon the Jury, Stat. 1. R. 3. folio 1.

3 The name of the person against whom the offence was done, this rule holdeth in most cases, but a man may be indited for killing of a man unknowne, or taking the goods of a man unknown for the Kings advantage, Lamb. 494.

Church
goods.

If the goods of a parson of a Church bee taken, it must be *bona Rectoris*, and not *Ecclesie*. And if the goods of a Church then *bona parochianoꝝ in custodia gardianorum* and not *Ecclesie*, 37. H. 6. fol. 10.

Executors.

If the goods of a man be taken, and after he make his executors and dyeth, the inditement shall be *bona Testatoris*. But if they were taken after his death it shall bee *bona testatoris in custodia Executorum Existencia*. Lamb. 496.

For a grave stone, the inditement shall be *bona Ecclesia*.

If a man take a coat armour which hangeth over a Tombe in a Church. The inditement shall be *bona executoris*, *ibid*.

If I baile (or deliver goods to one, from *Goods bai-* whom they be robbed, then it shall be *bona led*, of me in his keeping. *Lamb. 496*

- 4 The name and value of the thing in which the offence was committed: to make it appeare if it be felony, and it must be of a personall thing. 2. Or petty Larceny, if it be under twelve pence 3. or Trespasse, to aggravate or lessen the fault and fine.

The name and value ought to bee comprised in the Inditement, for an inditement of the taking of *bona & castalla*: whe her it be in trespassse or felony, is not good for *Value*, the uncertainty, what goods they be.

If it be for dead things, it may be *bona & castalla*, expressing the name of the things in certaintie, but if it bee of things living, it shall not say *bona & castalla*, But *Equum, Bovum, Ovum, &c.*

- 5 The manner of the fact, and the nature of the offence, and the manner of Treason, Murther, Felony or Trespass. For it may be high Treason, petty treason, Rape, Poysoning or homicide justifiable, &c.

The manner of the fact it selfe, and the *Manner* nature of the offence ought to be mentioned, for if the inditement be, *Quod A captum pro feloniam, felonice & voluntarie ad largum ire permisit*, this lacketh certainty, for what felony he was taken, and thereby is void, 8. Ed. 4. f. 3. And so if the inditement be, *quod*

K

felonia

Breach of
prison,

feloniae fregit prisonam apud A. and do not shew for what felony he was imprisoned there, *Lamb. 498.* And therefore it murther or manslaughter, it doth well to expresse the stroke whereof the death ensued, *Dyer fol. 69. Lamb. 498.*

Force,

And if it be that *A. and B. manu form intraverunt in tenementum, &c.* that also is insufficient, for the like certaintie. Because the word *Tenementum* may aswell extend to an house or Cottage, as to land, meadow, pasture, &c. *Lamb. p. 499.*

Manu fortis,

Dagger,

But if a man be indited for killing of B. with a Dagger, and the evidence prove it was with a sword, the inditement is good. Because the substance of the matter is, that the partie gave him a mortall wound whereof he died, and the circumstance of the manner with what weapon is not materiall *Coke liber: 9. folio. 67. in Machalliti case.*

Substance
found,

An inditement for selling (and making) of tanned leather was misliked, *1 Ri. 3. 61.* because it neither contained the place nor the person to whom the leather was sold, both which be materiall and traversable, *Lamb. 499.*

Place,
Person,

If (without *murderavit*) it be *quod A. occidit B. ex malitia premeditata, & voluntarie*, it is not enough, because one may kill another, so in battaile. And for the same reason if it be of man-slaughter, it must be *feloniae*, *Lamb. 500. 501.*

If it be of Burglary, then it must be *Burglariter*, or *ex intentione ad feloniam sua turduram faciend.* for it is not enough to say *Felonice fregit domum manzionalem in nocte.* And if it be of rape, it must say *felonice rapuit*

rapuit, for without *Rapuit*, it sufficeth not to say *felonice cepit Aliciam & eam carnaliter cognovit*. 9 Edward 4. folio 27. Lamb. 501.

If it be *felonice abduxit equum*. ; it is not good without say ng *cepit*, neither is *cepit* good alone without *abduxit*, for it must be *felonice cepit & abduxit*.

If an Inditement be of petty larceny, it ought to have felonice in it, 27. H. 8. fol. 27 and so in an inditement of *Mayhem*, it must be *felonice machinavit*. and yet it is not felony, Lamb. 502.

In an inditement of Trespasse or felony the words *contra pacem* ought to be used. Lamb. 502.

If the Inditement be of forcible entry, *Force*. then the words *vi & armis*, be needlesse, because they are necessarily implied in the word *force*, Lamb. 582.

If the inditement be founded upon a statute, it ought to say *contra formam Statuti in ejusmodi casu pro visis & editis*, or where many statutes doe concerne one offence, *contra formam diversorum statutorum*, without speciall naming of any. And then the best shall be taken for the King, Lamb. pag. 502.

But an Inditement of *Ryot*, without saying *contra formam Statuti &c.* is not good. Because it is no *Ryot* but by that statute, Lamb 502. 503.

A man was indicted upon the Statute, 1 El. 1 & 13. El. 2 for aiding another, knowing him to be a principall maintainer of the See of Rome, *contra formam statutorum praedictorum*, but for want of certaine materiall words, *viz.* upon purpose and to the intent

Ryot.
See of Rome

to set forth and extoll the authoritie, &c. the inditement was held insufficient, *Dyer*, 363. *Lamb*, p. 503. for a man may do it by argument: to shew his learning in such a degree.

Record,

Iustices of the peace may reject Indite^ments that finde any matter of record as ut^rary. &c. unlesse it bee shewed unto the ju^rors, *sub pede figi*.^r, for Iurors are to finde

Matters of Fact,

matters in fact on^ly, and not matters of record, *Lamb*, 503.

Additions,

Information

Additions (by Stat. 1 H. 5. cap. 5.) seem to have no place in informations brought against the breaker of a penall Statute, because it is not mentioned in it, and upon that reason the Courts, 13, H. 7. f. 21, did hold it cleare, that if *Rescous* be returned by the Sheriff, against certain persons without their additions, yet they may well bee outlawed thereupon, *Lamb*, 510.

Rescous,

Indite^ments of Accessaries.

Manner of the felony,

IF one be indited as accessary for the receipt of a felon, in the inditement there must be mention made of the manner of the felony: and that hee knowing him to have committed such a felony, hee feloniously received him. T. 7. H. 6. f. 42. But it is otherwise, if he receive one attainted of felony in the same Countie, where the felony was committed, in this case he needs not to make mention of the manner of the felony, P. 8 Ed. 4. fol. 3.

Same Countie,

Also it is no good inditement to say, that he feloniously received the goods, without saying

saying he received the felon also. Ass. 27. pl. 69, *Stamf. l. 96. b*

Although Inditements may be void in respect of charging any with felony, ut supra, yet diverse of them may stand and serve as Inditements of trespassse to put the partie to his fine, 18, Ed. 4. 10, 2 H. 7. 7. 6, H. 7. 4. namely such inditements which want no certaintie, but only want words to make it felony. And in case Inditements do want certaintie, the Iustices may award a Venire facias, against the Inditers to amend that which wanteth, *Stam. f. 97.*

If the Court upon the arraignment of a prisoner shall discharge him of the inditement: paying his fees, because they thought the inditement insufficient, yet if after another day or time they change their opinion, they may command the Gaoler to keep him in prison, and to stand to their deliverance notwithstanding his former inditement (if Iudgement bee not entred) and that by the Kings prerogative, being partie to the suit, *Stamf. fol 97.*

In an Inditement a man may become an approver, but not in an appeal, *Stam. 181. 182.*

1 The accessory cannot be convicted before the principall bee attainted, viz. by verdict or outlawry, *Lo. Sanchers case, Cook lib. 9. fol. 118. 119.*

2 The Inditement in Middlesex shall recite de facto, that the principall committed the murther in London.

3 If the offence bee committed in the same Countie, there needs not fifteen days for the returne of the *venire facias*. But if the inditement be taken in another countie, then

Received
the felon,

Trespasse

Venire faci-
as.

Change opi-
nion,

Approver

15 Dyer

then where the offence is committed : and removed into the Kings bench in that case there must be fifteene dayes betweene the Teste and returne of the *venire facias*, Lo. Sanchers case, *Cook lib 9. f. 118.*

4 If a man be indited as accessory to two, and be found accessory but to one, yet the verdict is good, *ib fol. 119.*

Erroneously

attainted,

5 If the principall bee attainted though erroneously either by error in the processe, or because the principall is out of the realm and so outlawed : or for that he was in prison at the time of the outlawry, yet the accessory shall be attainted because the principall shall stand untill it be reversed, *Cook lib. 9. f. 119 Lo. Sanchers case.*

Barres in Inditements.

Note alien
plantiffe.

Challenge,

2C

Alien.

See page 38.

SPinofas Case. If an alien borne do not pray *medietatem lingue* before the *venire facias* awarded, it will be too late afterwards: *Quia non constat iuria* that he is an alien, *Dyer 357. pl. 45.* But in case of Inditement, an alien shall not have his challenge, *de medietate lingue*, *Pulton. de pace regis, fol. 193. text. 3.* and the case of *Dyer* is upon an action brought by the partie and not upon an inditement.

1 The kings pardon with a *non obstante*, *Stamf. f. 99. 101.*

All felonies
attainder.

If a man be attainted of felony, and the King pardon him all felonies, it is not good because the Charter pardons not the attainder.

T. 9. Ed. 4. fol. 28, Stamf. 101.

If the King doe pardon 3. of all felonies by them or any of them committed. it is not good because the felony is severall.

Felony severall.

If the King grants to one to bee quit of escapes of felons out of his prison, it will not discharge him of uoluntarie escapes, but only of negligent escapes. because the king cannot licence men to commit felony, *Stamf. f. 203. b.*

Escapes

If a man broake the kings peace after hee hath a pardon, the pardon shall bee disallowed, *Stamf. 104.*

Peace broken

The pardon must agree with the judgement in the name, surname, and addition of the parties, *ibid.*

2 *Auxerfois* acquit of the same felony and then voucheth the record: for he shall not bee compelled to have the record in poigne, because his plea is not dilatory but in barre, and a man shall not put his life twile in ieopardie for one offence. *Stam. f. 105.*

Record

If a man be indited as principall and acquitted, he may be indited againe as accessory after, but if he be indited as accessory before, he cannot be indited after as principall, because they are in a manner but one offence, *Stam. fol. 105.*

principalli. Accessary.

If a man be indited and arraigned for the death of I. at Stile, which I. at Stile was knowne also by the name of I. at Noke, the defendant may plead and averre, that I. at Stile and I. at Noke are one and the same person, and shall be discharged thereupon: *Ass. 16. pl. 15.*

Two names.

So if a man be indited in one countie and acquitted, and is afterwards indited and arraigned of

Another
countie,

of the same in another Countie, hee may
plead the first acquittall in barre, Stamf. f.
105. b

severall of-
fences,

Quere, if the same law bee in Robbery
for a man may rob another diverse times,
and they are severall roberies, so that the
acquittall of one will not serve the other
as it will in murder where a man cannot be
killed but once, Stamf. f. 106.

Sufficient
matter,

Note, that autrefois acquit is no plea, if
there be not sufficient matter of felony in
the indirement, because his life never came
into question, Stamf. f. 106.

Felony,
Treason,

If a man attainted of felony have also
committed Treason, in this case hee shall
answer to the Treason for the Kings advan-
tage; because the King shall have the bene-
fit of his lands, *M. r. H. 6 f. 5.* But if the
Treason were committed after his attainder
offelony its otherwise, for then the title
which was invested in the Lord before the
Kings title cannot be revested by matter ac-
cruing *ex post facto*, Stamf. fol. 107

Revested.

If the principall have his clergie it shall
not serve for the accessory. *Crompt. Justice,*
fol. 27. 13. Ed. 4. fol. 3. Br. Coron. 184-158.
3. H. 7. f. 12.

Clergie.

Blind,
Maymed,

Sacriledge,

HE that is blinde or maymed or such
persons that by no dispensation may
be a Priest cannot have clergie, the
same Law is of a woman, but see Statute 21
Iacob. cap. 6. Nor he who hath committed
Sacriledge, Stamford 123. b. If hee have
not

not confure the Iudge may deny him Cler-
Tonsure,
fic, Stamf. 124. Quere

He that might have clergie may by the
 Common Law have had it oftentimes be-
 fore the Statute 4 H. 7. cap. 13.

He that kills a man by *misadventure*, or *se defenden-*
se defendendo, shall not have Clergie, nor *do,*
 for petty *Larceny*, because in these cases he *Per infortu-*
 shall not have judgement of life and mem- *nium,*
ber, Stamf. 124.

Hee which confesseth felony shall not
 have it by the common Law, but by Sta-
confesseth,
 tute of *Articuli Cleri*. he shall, *Stamf. 124.*

But *Cook's lib. 11. fol. 30* in *Alexander*
Tulters Case saith that hee that confesseth *confesseth*
 the felony upon Record shall not have his *Record,*
 Clergie, because he cannot make his purga-
 tion against his owne confession.

If a man be convict of heresie, a Sarracine, *Heresie.*
 Jew or Infidell, nor for Sacriledge, neither *Jew,*
Infidiatores viarum and *depopulatores agro-* *sacriledge,*
rum, shall not have clergie by the common *Turke.*
 Law, *Cook's lib. 11. fol. 30.* in *Alexander*
Tulters case. But the Stat. 1 Ed 6. 12 saith
 that in all other cases then are excepted in
 that Statute, they may, unless they are bar-
 red by any latter Statute. *Infidell,*

If the prisoner be indicted by the name of
 Clerke, Priest, or Monke, the Court must
 grant him his Clergie, though hee prayeth
 it not. *Stamf. fol. 131. b.* see *G. Parkers case.*

A Clerke may have clergie oftentimes *clerk burned*
 notwithstanding the statute of 4 H. 7. 13.
Stamf. 135. b. neither shall he be burned in
 the hand, *ibid.*

But afterwards, fol. 135. 136. hee saith.
 that in all such cases, in which a man is out-
 ed of his Clergie, by Stat. 1, Ed 6. cap. 12.

A man

*G. Parker's
case.*

a man within Orders is also outed as well as any layman, because the statute is general and also he is outed of Clergie by such statutes, in which clergie is taken away generally, and made since the Statutes of 1 E. 6. 12. Stamp. 136. And according to the last opinion you shall find is Geo. Parker Case, who was arraigned as accessary before for a murder committed upon the child of one *Hellen Millesen*, M. 2. C. 33. E. li. at Cambridge (being a bastard) when it is said, that albeit the said Parker were a Clerke, *tamen suspensus fuit pro procuratore pradiſſa*, Dyer fol. 186. pl. 3. but he was indited by the name of Geo. Parker Yeman.

*Malitiously
omitted.*

In case an accessary to robbery in a mansion house (and diverse being in the same house put in feare) be indited, and the word *malitiously* be omitted in the inditement, the accessary shall have his Clergie, Dyer fol. 183. pl. 59.

Tryall.

Note, The tryall is by the record it selfe, or by Stat. 34. and 35. H. 8. cap. 14. by transcript from the clerke of the Crowne of the Kings bench, Stamp. fol. 136. 2.

*Record.
Transcript.*

Clergie barred by Statutes.

- Clergie barred { 1. Vch as have had it before, Stat. 4 H. 7. cap. 13.
2. Souldiers running from their Captaines, 7 H. 7. 1. 3. 3 H. 8. 5.
3. Such as challenge 20 peremptorily, 25 H. 8. 3. 1 Ed. 6. 12.
4. Such as stand mute and will not answer, 25 H. 8. 3.

If Clergie barred

By Stat. 1. Ed. 6. 12.

- 5 Murther and poysoning.
- 6 Robbery in or near any high way.
- 7 Breaking house by day or night, any person in it, and put in feare.
- 8 Stealing of Horses.
- 9 Robbing of Church or Chappell.

If any of these be found guiltie by a Jury or shall confesse the same, or shall stand mute, or will not plead to the inditement, such shall not have Clergie. But if he be utlawed, he may have his clergie in all those cases, excepted by 1 Ed. 6. 12.

- 10 Robbers and Burglars in one countie being taken with the goods, and arraigned in another countie. Stat. 5 Ed. 6. 10.

- 11 Such as shall robb Bootheres or tents or any part of a mans house, although he be asleepe, 5 and 6. Ed. 6. cap. 9. 39. Eli. 4.

- 12 Cut-purse, Stat. 8. Eli. 4.

- 13 Burglars, 18, Eli. 6.

- 14 Rape, Stat. 18. Eli. 6.

- 15 Abusing woman child, under the age of 10. yeares, Stat. 18. Eli. 6.

Note, such as are allowed clergie may be kept in prison according to the

Iustices discretion for any time under one yeare, 18 Eli. 6.

- 16 Receivers of Testures, Stat. 27. Eli. 2

- 17 stealing any goods out of any house by day, to the value of 5 s. 39. Eli. 15

- 18 Taking women against their wills, 39. Eli. 9.

- 19. Wandring souldiers 39. Eli. 17

- 20 Incorrigible rogues, 1 Jac. 7.

- Clergie barred by Statutes.
- 21. Stabbing, 1 *Iac.* 8.
 - 22 Witch-craft, 1 *Iac.* 12.
 - 23 Acknowledging fines in other name, 21 *Iac.* 26.
 - 24 Buggerie. 25 *H.* 8. 6. 5 *Eli.* 11.
 - 25 Petty Treason, 12 *H.* 7. 7. 1
 - 26 House burners, 5 *Mar.* 4.
 - 27 Burning barnes with corne. *Mar.* 4.
 - 28 Robbing house by day, 39 *Eli.* 14.

Accessaries before, to

- For
- Horse stealers both before and after, 31 *Eli.* 12.
 - Petty Treason, 3 *Mar.* 4.
 - Murder, 3 *Mar.* 4. *Geo. Parkers case*, 33. 34.
 - Robbing of houses, 3 *Mar.* 4.
 - Robberie in highwayes, 3 *Mar.* 4.
 - Burning of houles. 3 *Mar.* 4.
 - (Burning barnes with corne, 3 *M. c.* 4.

Confession of the crime.

Though a man confesseth the crime yet if the confession doth appear unto the Court to proceed of feare, threatening or imprisonment; that he did it, he ought not to record his confession, but caule him to plead not guiltie, *Stamf.* 142. but nor if he confesse it upon record, because he cannot make his purgation.

Approver,

Approver.

After confession of the cryme the felon may appeale or accuse others, who were coadjutors with him: and in latine such an one is called probator, because he must prove the appeale, and the prooffe is by battraile, or by the country at the choise of the appealee. Stamf. 143.

2. Of what things he must approve.

He must approve of such Treason or Felony which he hath committed with others: for if he doe of any other thing it is void. Stamf. f. 143.

So if he will appeale one for that he procured him to commit such a felony, or for that an other received him that hee had committed such a felony. *M.* 10, Ed. 4. fol. 15. Ass. 40. pl. 39. For these offences he himselfe cannot doe. For he cannot rob himselfe, nor be accessary to himselfe. Stamf. fol. 143.

The prisoner upon his inditement of felony may acknowledge the Inditement, and pray a Coroner and so to approve. And so he may if he be not indited but stands at the barre as one delivered by Proclamation Stamf. 143.

approve humours,

If a man be in prison for suspicion of felony he may confesse the felony before a Coroner and become an approver.

at large,

But it is otherwise if he be at large, or in prison for any other cause then felony or Treason. Stamf. fol. 143. b.

After a man hath pleaded hee cannot have a coroner assigned him, 21 Ed. 3. 18. Stamf. 149. *Crompt. Justice. fol. 66. b.*

2.

2. Before what judges he may approve.

Before such as have power to assign him a coroner, as Iustices of the Kings bench in eyre or gaile deliverie, but Iustices of the peace cannot take it; Stamf. fol. 143. 144.

2. How the approver must demean himselfe.

1. Before his approvement hee must confesse the felony, before he plead, 2. If he contradict himselfe hee is to bee hanged. 3. Then he must be tworne. 3. Hee shall have but three dayes allowed him by stat. 5, Ed. 2. cap. 34. rep. 4. when a Coroner is assigned unto him, hee is to bee let out of prison under keeping. 5. When hee hath made his appeal before the Coroner, & the Coroner hath entred the same into his roll, then hee shall come againe before the Iustices, and repeate his appeale before them, (for his appeale shall not bee read unto him) and if he misse a word in the rehearfall thereof, other than the Coroner hath recorded he shall be hanged, as if in his rehearfall he say he stole a blacke horse where it was a red. 145.

Paine fort & dure.

NOne shall be adjudged to this paine if there be not evidence or publike matter to convince him of the crime whereof he is arraigned, or otherwise if he bee not a notorious felon, or of ill fame, Stamf. fol. 150. Stat. 3, Ed. 1. 13.

This judgement shall be given him, only when he is arraigned at the suit of the king and

and not at the suit of the partie; for then he shall be hanged, scil. upon an appeal, Stamf. fol. 150.

Not culpable or not guilty.

IN case a man arraigned plead any plea in barr, as autrefois acquit, of the same felony &c. he must plead his plea, and pray allowance thereof and further, as for the felony not guiltie, Stamf. 151. b

Tales.

TAles is granted, when sufficient of the principall pannell do not appear to make a Jury, or are put by for being challenged. In this case the Plaintiff shall have a Tales, and diverse Tales one after another. For first when he craves a Tales, it ought to be under the number of the principall pannell (except in an appeale, for there the plaintiff may crave more, because of the peremptory challenge as M. 14. H. 7. fol. 7. and the second number shall be under the number of the first, as M. 14. H. 7. fol. 1. T. 20. H. 6. f. 40.)

If all the poles are challenged and drawn then no Tales shall be granted, but a new venire facias. And if one enquest be charged, and one of them dye before the verdict, in this case a Tales shall be awarded, and not a new venire facias. The same law if a Juror dye before he be sworne, and so returned by the Sheriffe, it shall not abate the pannell, but be a cause to grant a Tales. M. 20. Ed. 4. 11. Stamf. fol. 155.

Poles.

Juror.
Dye.

Juror.
Die.

In

Iustices of Gable delivery, may take a pannel of the Sheriffe without making any precept unto him. Because, before their coming, they give a generall command to the Sheriffe to cause the Countie to come before them. But it is otherwise of Iustices of peace, for they were advised by the Iustices of both benches, *M. 22. Ed. 4. 44.* that they should not proceed in the deliverance of a felon the same day that they award the *venire facias*, against the Jury, but another day, *Stamf. f. 155. 156.*

Venire fac.

Tryall.

Iustices of Oyer and Terminer cannot enquire and determine it the same day, no more, then Iustices of the peace, *Bransford Case, H. 11. Caroli. Hils Reports.*

Challenge in felony and Treason.

Here be two sorts of challenge,

1 Peremptory, the partie arraigned may challenge 20. without shewing cause, by *stat. 22. H. 8. 14.*

2 Challenge *pro cause*, as 1 no Inditor shall be upon the same Jury, *stat. 25. Ed. 3 cap. 3. De prodicionibus.* 2 Challenge to the arrayr where an alien is indited, and the Jury be not *de medietate lingua*, *stat. 28. Ed. 3, cap. 13.* but it is no matter of what nation the aliens be: but an *Alien Plantiffe* cannot have this challenge, (but the defendant only) because the plantiffe may surmise before the *Venire facias* awarded, that he is an Alien, and may pray processe according to the statute, *Stamford fol 158, 159. M. 21. H. 7. fol. 32*

see page 50
138
Alien.

Egyptians,

Egypti.

Egyptians shall not be tryed *per medietatem linguæ*, but are barred by stat. 22 H. 8, 15. 2 Mar. cap. 4.

Egyptians.

Whereas the words of the foresaid statute of 28. Edward .3. 13. bee, that in all manner of Enquests and proofes which are to be taken, &c. Those words are not to be construed of an inditement, for that may bee taken all of denizens, though it doe concerne an alien, but the statute is to be intended of such Enquests where the partie is admitted to his challenge, and so he is not upon an inditement.

Alien.

In ciuill causes.

For the party which is an Alien may upon his arraignment have the said challenge in the array, to shew that in the pannell there is not *medietas linguæ*, according to the statute 28. Ed. 3. 13. (confirmed by statute, 8 H. 6. cap. 29. for he hath no other remedy being defendant, but if he be plaintiffe, then before the venire facias awarded, hee must suggest that he is an Alien, and pray proces to summon the Iurie, *de medietate linguæ*, and suggest in what parts beyond the sea he liueth, that so hee may have men of the same Countie of his Enquest. And if he will not, (*viz.* the plaintiffe) signifie that before the venire facias awarded, he shall not suggest wafter, nor challenge the array or poles for that cause, seeing it was his folly he took not the benefit of the statute in due time. *Pult. de pene, fol. 193. feli. 3.*

If both the parties be aliens, the enquest shall be all English, and not *de medietate aliens*.

Both parties

If an alien be indicted of high treason, he shall not have his tryall *de medietate linguæ*, but the tryall shall be according to the due course of the common lawes of this

Treason.

S^{er}.

Realme. And if a Scot be indited of felony, he shall not have his *mediatus lingua* for he was never accounted an alien, but a subject: *Tulson de pace. folio. 193. b.*

40. s. per an.

sect. 3. Dyer 144. Dyer 304

If a Juror have not forty shillings *per annum*, by Statute, 2 H. 5. cap. 3. and that forty shillings in the countie where the issue is to be tryed, *qu. 9. H. 7. f. 1.* except in Townes corporate, who are excepted by Stat. 23. H. 8. 13. *Stranf. f. 160. 161.*

K. challenge

The King may challenge for cause. M. 44. Ed. 3. 38. The King challenged the array in conspiracy, because the Sheriffe purchased a Mannor parcell of the premises comprehended in the Inditement, 2. If the Sheriffe be cozen to the partie, 4 H. 7. 3. *Stranf. f. 1620*

cozen

Verdict.

Speciall,

UPon the issue of not guilty, it is not alwayes requisite to have a generall verdict, for if the fact bee doubtfull to the Jury be it felony or not, they may give a speciall verdict, *Stranf. f. 164.*

Sed defenden-
do.

As a Jury may give a speciall verdict touching a man that killeth another in his owne defence, so may they also where hee that is arraigned, killed another by misfortune, or where he that committed the homicide was not of perfect memory, or an infant without discretion, or that the thing that was stolen was not worth above ten pence, Or he which is indited and arraigned for murder, did kill the man by chance medley or in his owne defence, and not of malice

Per infortun-
niumNon sana
memoria.

Vnder value.

malice prepenſed. *Pulſon de pace*, fol. 196 ſect. 2.

*Chance
medley.*

And as a jury may give a ſpeciall verdict ſo attenuate an offence, and make it leſſe penall, ſo they may by a ſpeciall verdict aggravate the offence more than the inditement did, as *Fitz. Coron.* 115. A man was indicted & arraigned for the ſtealing of a linnen cloth to the value of two ſhillings, and the Iury found, that he did rob the owner of the linnen cloth to the value of ten ſhillings, and further that he tooke it from the perſon of a man, whereupon he was adiudged to be hanged. *Pulſ de pace* f. 196. 197. ſect. 13.

To aggravate the offence

A man pleaded *non culp.* upon his arraignment of felony, and challenged 31. and upon a tales returned, the felon would not plead, wherefore the Iury was charged upon him, and hee was found guiltie and hanged; 15. *Ed.* 4. 33. becauſe he pleaded not guiltie before, *Crompt.* Juſtice of peace, fol. 19. b. So it ſeemes if he pleade upon his arraignment, at the firſt it ſufficeth.

Mute.

If a man arraigned of felony plead not guiltie, and after he became mute *per aſto de diem*, he ſhall not be tryed, *Fitz. droit. pl.* 57. 11. *M.* 3. adiudged accordingly, and *Crompt.* Juſtice, fol. 19. b.

Mute.

Conspiracie.

*Falsly and
Maliciously.*

HE that is charged in conspiracie, must be charged that he did it falsely and maliciously, without any good or lawfull ground, Stamf. 172.

Against one

Conspiracie cannot be maintained against one person alone, 173. nor against two who present but one person, as a man and his wife, Stamf. fol. 174.

*Iudgements
Conspiracy.*

Note that when one is Convicted of conspiracie, at the suit of the partie, the judgement is no other, but that the plaintiff shall recover his damages, *Es quod defendente capiantur*. But when it is at the suite off he king, it is more grievous, viz. The Iudgement is that he shall loose free law, and shall not henceforth be put in Iuries or Assizes, nor shall bee no witness, and if hee have to do in the kings court, he shall make attorney, his lands goods and chattels shall be seised into the kings hands, and his writings and trees rased, and his body to prison. Stamf. fol. 175.

Iudgement in. Treason,

THat he be carried back to the place whence he came, and from thence to be drawne upon an Hurdle unto the place of Execution. and there to be hanged by the neck and cut downe alive; and his bowels and privie members to be cut of his body, and burned before his face, and his head to be cut off, and his body to be

be divided into foure parts, and disposed
of to the kings pleasure. But for counter-*Coyne.*
feiting the kings coyne only to bee drawne
and hanged.

Petty Treason.

THe Indgement is to bee drawne and
hanged, But a woman must be burnt, *Womad.*
Stamf. 182. b

Felony.

FOr Felony the Indgement is that hee
shall be hanged by the necke, *Ses.*
per col.
Conspiracie, ut supra.

Accessary.

NO accessary unto petty Larceny as
sir *Humphry Davenport* chiefe Ba-
ron held at Exon Assizes. 10 of
March, An. 9, *Carols.* *Petty lar-*
But M *Rislon* saith that he may be acces- *ceny.*
sary after to petty Larceny,

Forfeitures.

IF it be found in the Coroners roll. that
the partie indited before him fled. yet
he shall forfeit his goods, albeit he bee *Coroners*
afterwards acquitted of the same felony, *Roll.*
Stamford fol. 183. b

*Coroner.
Accessory.*

A Coroner cannot enquire, of accessories after the murther, 4 H. 7. fol. 18, because he that was slaine came not to his end by their meanes, *Stamf.* 183. 184.

Retraxit.

If a Iury acquit a man, and find that he withdrew himselfe for the felony, he shall forfeit his goods, *Stamf.* 184.

Petty Larceny.

If one be indited but for petty larceny and acquitted, yet if it bee found that he withdrew himselfe, his goods are forfeited, and so shall he forfeit his goods, although he have a pardon, *Stamford.* 184. because

Pardon.

the pardon doth rather continue the presumption against him, then take it away, *Stamf.* 184.

Exigent.

*Acquired
Appeare of
record.*

*In prison.
Pardon.*

If a man be indited and comes not in before the exigent, he forfeits his goods although he be afterwards acquitted, because it doth appeare of record that hee withdrew himselfe, except he can prove that he was in prison, or beyond the seas and could not come. But if the King doe pardon him before the exigent awarded, his goods are then saved, *Stamf.* 184.

Of Lands and goods.

*Tenant in
taile.*

Tenant in taile for felony doth forfeit his lands for life only, and so also for petty treason, also he forfeits a right to lands and all his obligations and debts, and debts upon contracts, and debts upon accompt, *Stamf.* folio 187, 188.

*Another
mans goods.*

Also he forfeits another mans goods in some cases, as if hee have another mans money in his custodie to keepe, as money out

accessary of bagge, or come out of a sacke, be-
8, because the owner cannot proye it to bee his
to his money or his corne. But if it bee a thing
34- knowne it is otherwise, *Stamf. fol. 108.*

But it is otherwise of Executors, because
ne they are *bona testatoris in custodia eorum.*
Stamf. 188. b

A man arrested of felony escapes and is
that he slaine in pursuit, he forfeits his goods. The
feited same law if he be slaine before hee bee ar-
though rested, *Stamf. f. 188. 189.*

For misprision of Treason his goods and
because chattels for ever, and the profits of his
e pre lands during his life.
away

For misprision of Felony to be fined only.
not in For high Treason, all his goods and
ods al chattels, lands entayled, his wife loseth
because her dower, and his blood corrupt.

In praemunire, his goods and chattels, his
with- lands in fee for ever, his lands intailed for
that he life and imprisonment for life, *Dalt. 203.*

Felo de se his goods and chattels and debts
could by specialtie, but not his lands nor his blood
n him corrupt. *Dalt. 208.*

For Petty Larceny his goods and chat-
els. *Dalt. 230.*

For killing one by misadventure, his
goods, *Pulton de pace, fol. 216.*

Se defendendo, his goods. *Pulton de pace,*
d fo fol. 216.

He that standeth Mute forfeits his goods.
for- *Pulton de pace, fol. 216.*

24 H8 cap. 5. no goods forfeit
for killing one & wound Rob, or
murd^r one, in my House, & Hy way

Annum

A thing
knowne.
Executors.
Escapes.
slaine before
arrest.

Annum Diem & vastum.

THe yeare day and waste is given by
stat. *De prerogativa Regis*, An. 17.
Ed. 2. 16. *Stamf. fol. 190.*

The words of the statute are, *si habeas li-
berum tenementum capientur in manus Do-*
mini Regis statim. This word *statim* ought
to be understood presently after office found
and not before, P. 49. Ed. 3. fol. 11.

If an office be found twenty yeares after
Land wasted the attainder, yet from that time untill a
Escheat. yeare after. shall be said *Mesue tempus*, be-
cause the Lord is to have the Land without

Composition profit, that is to say wasted. For the Lord
cannot have the Escheat before the king
hath had the yeare, day and waste, or be sa-
tisfied by way of composition. Neither can
he enter into his escheat, untill hee hath
sued a writ to have it out of the kings hand,
for after a writ is issued to find an office of
the land of him that is attained: another
Writ to en- writ shall issue (as in the Register) to en-
quire. quire if the king, hath had the yeare day
and waste, and that being found, the Lord
shall have the land out of the kings hand
and not before.

For notwithstanding the office, it may
King interu- be the king was interrupted by some person
pted. or casualtie, but the king may grant it af-
ter hee is intituled to it by office, *Stam-*
ford fol. 191.

Also the king shall have the ground so-
Growned so-
wen. wen, *Stamf. fol. 191.*

The

The time to which the forfeiture
shall relate,

1. **F**Or lands, that shall have relation to
the time of the felony committed.

And after that time he is restrained
from alienating of them, 30. H. 6. fol. 5,
Stamf. 192.

2. But for goods if a man commit felony
and is attainted, and betwene the felony
and the attainder he gives his goods. This
gift is good, because for goods and char-
tels, it shall have relation (not from the
time of the felony committed) but from the
time of the forfeiture of them, and therefore
if a man forfeits his goods upon *fugam fecit*,
presented before a coroner, he forfeits not
the goods he had at the committing of the
felony but only the goods he had at the
time of the presentment of *fugam fecit*. So
upon Vclary he forfeits the goods which he
had at the time of the exigent awarded and
not before. Or if hee be convicted, hee for-
feits the goods hee had at the time of the
verdicts given, Stamf. fol. 192.

Alienation

*Gives his
goods.*

Fugam fecit

*At the time
of the pro-
sentment.
Exigent.
Convict.
Verdict.*

24 H. 6. ca. 4. no lands & goods forfeit
for killing one & Attempt to Rob me,
My way, & in my House. When

When felons goods shall be seised.

*Coroner.
goods.
Enquire.
Praise the
goods.
Deliver
them to the
towne.
Fugam fecit
Sheriffe to
seise the
land and
goods.
Enquest
enrolled,
Towne.
Attainder
suretie
Custody.*

*stat. expoun-
ded.*

*Towne to
have the cu-
stodie.*

When any one is found guilty before the Coroner, the Coroner shall presently go to his house, and enquire of his chattels and corne, and of his lands and corne growing, and praise them and deliver them to the towne to keepe, and answer before the Iustices.

And when *fugam fecit* is found before the Coroner, the Sheriffe shall seise the lands presently into the Kings hands by word, without any Enquest, And also all his goods and praise them by good enquest, and cause the price to be enrolled in the coroners roll, and deliver them to the towne to answer the king of them, And *M. 43. Ed. 3. fol. 24.* It is said that the kings Officer cannot seise a felons goods before attainder, and if he find suretie, he shall leave them in his custodie. But whether he finds suretie or not, he is not to carry them away with him, but must leave them in the custodie of his neighbours, Stamford, folio 192. b.

Stat. 1. Ri. 3. cap. 3. Extends but only to those who are imprisoned or arrested, for of those that are at large and indited of felony, the Sheriffe may seise their goods at the second Capias, by *Stat. 25. Ed. 3. cap. 14. Stamf. 193. b.*

The custodie of the goods of those who are convicted of felony, or are fugitive belongs to the towne where the felon inhabited, and though the goods were not de-

live

livered to the towne but remaine in the cu-*Convict*
stodie of the felon, the towne must answer *Fugitive*
them, Stamf. fol. 193. b.

And note the same towne may seise the *Town may*
goods in whatsoever place they may bee *seise the*
found. But now by the Statute made *An. goods*
13. Ed. 3. 3. the towne shall bee eased of
this charge, if they can declare that any o-
ther doth detain the goods, and that they
have not nor can have the possession of *Town eased*
them, Stamf. 194.

But of Lands the Sheriffe is chargeable
with the profits thereof, and not the town, *Sheriffe*
Stamf. fol. 194. b.

Pardon.

Quere, If the King doe pardon the of-
fender, whether it will take away
the corruption of blood of those who *Corruption of*
are borne before the pardon, as it doth of *blood*
those who are borne since the pardon, Stam
fol. 165. b.

If a man privily cut another mans purse
and take it from his person, it is not robbery,
because he was not put in feare, but if it
be above twelve pence its felony, if it be
under twelve pence it is petty Larceny,
Crompt, Iustice. 32. b.

How

How to attaine to the forfeiture

Writ of Escheat.

IF a stranger enter upon Lands escheated upon attainder, the Lord may have a writ of Escheat or entry. And the writ must rehearse the manner of the felony, but generally, *quod feloniam fecit*, H, 46, Ed. 3, 45 *Straw*, 197. 198.

Enscintments.

Plead to the Felony.

IF a woman be arraigned of felony it is no plea for her to say that shee is with child, but she must plead to the felony, and when she is found guiltie shee may say that she is with child, and thereupon the Marshall shall bee commanded to put her into a chamber and cause women to search her, whether she be quick conceived with child or not, and if they finde that shee is quick with child, she shall be respited untill her delivery, otherwise to bee hanged presently. But whether she be with child or not, the iudgement must bee entred presently. And if arter she is delivered and be with child againe with new, and she object the same for prolonging of her life, the Iudge without further enquiry thereof, ought to command execution, because shee shall have the benefit of her belly but once. But if the Iudge will enquire thereof, it is to no other purpose but to set a fine upon the Marshall for the keeping of her so remissly that shee hath had the company of a man, *Straw* fol. 198.

Search.
Venire faci.
as tot matronas.

Iudgement entred presently.

Execution.
Gaoler fined

F I N I S.



The Commission of the Peace.

Iacobus dei gratia, &c. per dilecto & fidei
Francisco Bacon militi, domino cancel-
lario Angliæ **A. B. C. D. E.**, &c.
salutem.

I. Sciatis quod assignavimus vos con-
iunctim & divisim, & quemlibet vestrum
Justiciarios nostros ad pacem nostram in
Com. Devon. conservandam; Ac ad omnia
ordinationes & statuta pro bono pacis no-
stræ, & pro conservatione ejusdem: ac pro
quieto regimine & gubernatione populi no-
stri edita, in omnibus & singulis suis articu-
lis in dicto Com. nostro (tam intra liberta-
tes quam extra) iuxta vim, formam, & ef-
fectum eorundem custodiendum & eum cu-
stodiri faciendum. Et ad omnes contra for-
mam ordinationum vel statutorum illorum,
aut eorum alicuius in Com. prædicto de-
linquentes castigandum & puniendum, pro-
ut secundum formam ordinationum & statu-
torum illorum fuerit faciendum. Et ad om-
nes illos qui alicui vel aliquibus de populo
nostro de corporibus suis, vel de incendio
domorum suarum minas fecerint ad suffi-
cientem securitatem de pace vel bono gestu
suo, erga nos & populum nostrum inveni-
entiam coram vobis, seu aliquo vestrum

venire faciendum. Et si hujusmodi securitate invenire recusaverint, tunc eos in Carceris nostris (quousque hujusmodi securitatem invenerint) salvo custodiri faciendum.

2. Assignavimus etiam vos, & quoscunque duos vel plures vestrum (quorum aliquem vestrum, A. B. C. D. &c. unum esse voluimus) Justiciarios nostros ad inquirendum per Sacramentum proborum & legalium hominum de Com. predicto (per quos res veritas melius sciri poterit) de omnibus & omnimodis felonis, veneficiis, incantationibus, sortilegiis, arte Magica, transgressionibus, forstallariis, regratariis, ingrossariis & extortionibus quibuscunque. Ac de omnibus & singulis aliis malefactis & offensis (de quibus Justiciarii pacis nostrae legitime inquirere possunt & debent) probos quoscunque & qualitercunque in Com. predicto factis sive perpetratis, vel in postea ibidem fieri vel attemptari contigerint. Ac de omnibus illis qui in Com. predicto in conventiculis contra pacem nostram & perturbationem populi nostri, seu vi armati fuerint, vel equitaverint, seu in posterum ire vel equitare praesumpserint. Ac etiam de omnibus eis qui ibidem ad gentem nostram iramemendam vel interficiendam, in itinere sidiis jacuerint, vel in posterum jacere praesumpserint. Ac etiam de Hostelariis & aliis omnibus & singulis personis qui in abutendo ponderum & mensurarum, sive in venditione victualium, contra formam ordinationum & statutorum vel eorum alicujus inde per communem utilitatem regni nostri Angliae & populi nostri ejusdem, editorum, delinquent, vel attemptaverint, seu in posterum delinque

secundum delinquere vel attemptare præsumpserint in
eos Com. prædict. Ac etiam de quibuscunque
di fecerint Vicecomitibus, ballivis, Senescallis, Con-
siliariis faciliariis, custodibus Gaolorum & aliis
Officiariis qui in executione Officiorum suo-
rum (circa præmissa seu eorum aliqua)
aliquem indebitè se habuerunt, aut in posterum in de-
bitè se habere præsumpserint, aut tepidi,
tremuli, remissi, vel negligentes fuerint, aut in po-
tium horum fore contigerint in Com. prædict.
uos res de omnibus & singulis articulis & cir-
cumsstantiis & aliis rebus quibuscunque
cantantur quoscunque & qualitercuque, in Com.
transgressi, factis sive perpetratis, vel quæ in
officiariis posterum ibidem fieri vel attemptari con-
Ac dixerit qualitercuque præmissorum vel eorum
& alicujus concernentibus, plenius veritatem.
stræ lèt ad indictamenta quæcumque sic coram
(pro)bis vel alicubus vestrum capta sive ca-
pienda aut Coram aliis nuper justiciariis
in postea in Com. prædict. facta seu capta (et
terminandum terminata) inspicendum. Ac ad pro-
prædictis inde versus omnes & singulos sic in-
dictatos vel coram vobis in posterum indictari
arma contigerit (quousque capiantur, reddat se, vel
posterum intelligitur) faciendum vel continuandum.
et etiam ad omnia & singula, felonias, veneficia,
nostrancationes, sortilegia, artes magicas,
in transgressionibus, forstallarios, regratarios, in-
ter prætallarios, extortiones, conventicula, in-
& alia indictamenta prædicta ceteraque omnia &
ab omni præmissa, secundum leges et statuta
ditionis nostri Angliæ (prout in hujusmodi
tionibus fieri consuevit et debuit) audiendum
inde per terminandum, & ad eosdem delinquentes
Angliæ & quolibet eorum pro delictis suis, per
delictiones, redemptiones, amerciamenta, forstac-
tionibus, ac alio modo (prout secundum legem
inquit

et consuetudinem regni nostri Angliæ, aut formam ordinationum vel Statutorum prædictorum fieri consuevit aut debuit) castigandum et puniendum.

Provisio semper quod si casus difficultatis super determinatione aliquorum præmissorum coram vobis, vel aliquibus duobus vel pluribus vestrum evenire contigerit; Tunc ad iudiciū inde reddendum nisi in præsentia unius Justiciariorum nostrorum de uno vel de altero Banco, aut Justiciariorum nostrorum ad Assizas in Com. prædict. capiendas assignatorū coram vobis vel de aliquibus duobus vel pluribus vestrum non procedatur.

Et Ideo vobis et cuilibet vestrum mandamus quod circa custodiam pacis, Ordinationum, Statutorum, et omnium et singulorum ceterorum præmissorum diligenter intendatis, et ad certos dies, et loca quæ vos vel aliqui huiusmodi duo vel plures vestrum (ut prædictū est) ad hoc provideritis super præmissis faciatis inquisitiones, et præmissa omnia et singula audiat et terminetis, ac ea faciatis et expleatis in forma prædicta, facturi inde quod ad iustitiam pertinet, secundum legem et consuetudinem regni nostri Angliæ. Salvis nobis amerciamentis et aliis ad nos inde spectantibus.

Mandamus etiam tenore præsentium Vicecomiti nostro Devon quod ad certos dies et loca (quæ vos vel aliqui duo vel plures vestrum (ut prædictum est) ei scire feceritis venire faciat coram vobis vel huiusmodi duobus vel pluribus vestrum ut dictum est) tot et tales probos et legales homines de Balliva sua (tam intra libertates quam extra) per quos rei veritas in præmissis melius sciri poterit et inquiri.

3. Assignavimus denique te prefatum Edwardum Comitem Barthon. custodem rotulorum pacis nostræ in dicto Com. nostro. Ac propterea tu ad dies et loca predicta breviter precepta processus et indictamenta predicta coram te et dictis sociis tuis venire facias, ut ea inspiciantur et debito modo terminentur sicut predictum est, in cuius rei testimonium, &c.

Of forcible entries.

IF one man or more, shall come weaponed to a House or Lands, and shall violently enter thereinto; much more if he shall there offer violence to the person in possession, and most of all if he shall expell the other out of his possession; This will prove a forcible entry, Lamb. page 142.

So hee that entreteth in a peaceable shew, the Doore being but latched, and yet when he is come in, useth violence and throweth out such as hee findeth in that House: because his entry is not consummated by the onely putting of his foote over the threshold, but by his action and demeanour, when he is come into the House. Lam. p. 143.

If 3. or 4. who come in one company to make such a forcible entry, and only one of them doth use force and violence, yet are all the rest guilty of this force wth them.

And whether a man did actually use force in his entry, or doe come so readily appointed and arrayed for that, that other men may bee reasonably affraid

that hee mindeth to make his way with force, rather then he will sayle of his desired purpose, that seemeth to be a forcible entry, Lamb. 143.

But a forcible entry cannot be adjudged against a man without an actual entry be also made by him, Lamb. page 144.

Of forcible holdings

IF a Justice of peace come to a House supposed to be holden with force, and shall there finde but one person who keepeth the doore shut agst him, and will not suffer him to enter, This is a forcible holding. Lam. 145.

If a man that is entered into a House will bestow men with force and Armes in some other House. or place (not far distant) to the intent they may be ready to assault such as shall make an attempt of entry upon him; This is a detaining with force.

Or if a disseisor of a House or Land shall forestall the way of the disseised with force and Armes, so that he dare not enter or approche for feare of death, This is detaining with force.

If a man have a rent or common in Land, and hee is so forcibly resisted by the Tenant of the Land, that hee dare not to distraine for the one, nor to use the benefit of the other, this is an holding with force punishable by this Statute, Ass. 29. pl. 49, Lamb. p. 146

But

The duty of the Iustice, &c. 155

But all that which is here said must be taken to be said of a forcible detaining of the possession, and not of a mans person, Lam. 146.

The duty of the Justice of Peace
in case of a forcible holding,

The Justice of Peace ought not to stop, or stay at all about the right or wrong of his Title that entereth; for the statute of 5 Ri. 2. doth without exception prohibite all entres with force. And the statute of 8. Hen. 6. permitteth no forcible holdings, but only where 3. yeeres possession have gone before.

For if A. shall disseise B. of his Land, and B. doth enter againe and put out A. with force, A. shall be restored to his possession although his first entry were utterly wrongfull, Lam. 146.

Concerning restitution.

NO Restitution can bee made but only upon enquiry by Jury.
Lam. 151.

If a man be indicted upon the Statute of 8. Hen. 6. for a force without saving manu forti, or cum multitudine, the Bill would be insufficient, Lam. 142.

It is not altogether requisite to bee found (for the punishment of the offenders by imprisonment, and fine) that the party proved is actually throwne out

out of possession by them : (for the only holding with force will suffice for y^e purpose.) Yet in other cases for the having of restitution by the Statute, this putting out must of necessity be found by the enquiry. As if to be presented that you were seised untill A. entered upon you with force, you shall never have restitution by it, because it may bee he entered forcibly, & yet you were not put out by him. But if it be found you were seised untill A. put you out with force, and that hee holdeth in with force, you shall be restored to your possession againe Lamb. 153.

And this putting out must be understood of a House or Land onely, and not of a rent, common, advowson or such like, whereunto an actual entry cannot be made, Lam. 153.

Moreover, it is not enough that the putting out be found, unless the indictment doe also containe adhuc extra tenet, that he holdeth the other out of possession; for else it may be thought that the other hath got in againe, and so restitution is needlesse. Lam. 153.

Againe this restitution ought to be made to him, that was put out, and to none other: for if the Father be put out with force, and die after the enquiry before restitution, his heirs shall not have restitution upon it. Lam. 154.

If it happen that two Joint tenants of Land be put out with force, and one of them onely will sue for restitution, he ought to have it made unto him.

If a Lessee or any Copy-holder will be aided by way of restitution, the enquiry must find the lessor or Lord to be forcibly put out and expelled, that by his restitution the lessee or copy-holder may be restored also. But now by the Statute of 21. Jacob, cap. 15. restitution may be made unto the Tenant himselfe.

After the entry and detaining with force presented, the Justice of Peace may either by himselfe, or by directing his precept to the Sheriffe under the teste of himselfe alone restore the party presented to his possession.

Travers.

Such persons as the Justice of Peace both finde and see continuing the force at his coming to view the force, those hee may immediately commit unto the Gaole as convict of that offence upon his view. But upon the enquiry I see not that the Justice of Peace hath any other power committed unto him, then to make restitution onely. And that he may doe notwithstanding this offer of Travers.

And if he will not so doe, the safest way is to deliver or certify the presentment into the Kings Bench, and refer the farther proceeding therein to their power, Lam. 158.

A man is indicted for entering with force, and holding with force, and it is found that he entered with force, but

he did not detain with force, yet the party shall be restored. *Crompt. Justice of peace, fol. 109. l.*

A mittimus for holding with force upon the Justices view.

Memorandum quod octavo die mensis Januarii, anno regni Domini nostri Carol. &c. Queltus est mihi, Edmundo Prideaux uni Justiciarorum domini Regis ad pacem in dicto Com. conservand. assignat. quidam, *A. B. de M.* in dicto Com. Yeman, quod *C. D. de M.* prædict. & nonnulli alii pacis dicti Dom. regis perturbatores ignoti, in domum mansionalem ipsius *A. B.* in Com. prædicta. manu forti ingressi sunt, et ipsum, *A. B.* disriferunt, ac eandem manu forti et armata potentia adhuc tenent, ac proinde petiit à me sibi in hac parte remedium apponi. Qua quidem querimonia et petitione audita ego profatus Edm. Prideaux immediate ad dictam domum mansionalem personaliter accessi, ac in eadem domo ad tunc inveni præfatum *C. D.* et quosdam, *E. F.* et *G. H.* &c. domum illam vi et armis, manu forti et armata potentia, viz. arcubus et sagittis gladiis, pugioibus, galeis & loricis, tenentes contra formam statuti in Parlamento domini Richardi nuper Regis Angliæ secundi, anno Regni sui, decimo quinto teneto provisi, ac contra formam diversorum aliorum Statutorum. Ac propterea ego præfatus Edm. Prideaux prædictos *C. D. E. F. G. H.* ad tunc et ibidem arrestavi, et proximæ Gaule dicti domini Regis apud *C.* in dicto Com. duci feci, ut de dicta manu forti

manu forti tentione per visum et Recordum meū convictos, ibidem moraturos quousque fines dicto domino Regi pro transgressionibus suis predictis fecerunt. Dat. apud C. . radii. sub sigillo meo die et anno supra dictis.

Stat. 3. R. 2. c. 5. *Is for such as enter with force and strong hand, or multitude of people, are unpunishable by imprisonment and ransom.*

Statut. 3. Ri. 2. c. 2. *If any hold forcibly after entry made in peaceable manner and are punishable by imprisonment untill they make fine and ransom.*

Statut. 8. H. 6. cap. 9. *If any enter with force and hold peaceably: or if any shall enter peaceably and shall hold with force, as also such as shall both enter and hold forcibly.*

A Mittimus for holding with force upon the Justices view, &c.

Edmund Prideaux Esquire, one of the Justices of the Peace of our Sovereign Lord the Kings Majesty, within the County of Devon; To the Keeper of His Majesties goal at the Castle of Exon, in the said County and to his deputy and deputies there, and to every of them greeting. Whereas upon complaint made unto me this present day, by A. B. of W. in the said County yeoman, I went immediately unto the House of the said, A. B. in W. aforesaid and there found, C. D. E. F. and G. of W. aforesaid
laborers

160 *A precept to enquire of force.*

laborers forcibly and with strong hand
and armed power holding the said
House, against the peace of our So-
beraigne Lord, and against the forme
of the Statute of Parliament, thereof
made in the 15 yeere of the Reaigne of
our late King Richard the second. Ther-
fore I send you by the byngers hereof
the bodies of the said, C. D. E. F.
and G. convict of the said forcible hold-
ing by mine owne view, Testimony,
and Record, commanding you in His
Majesties Name to receive them into
your said Goale, and there safely to
keepe them untill such time as they shall
make their fines to Our said So-
beraigne Lord for the said Trespasse;
and shall bee thence delivered by the
order of the Law of the Land. Hereof
faile you not upon the perill that may
follow thereof. Given at West, asforesaid
under my Seale the day of. &c.

A precept to inquire of a force.

Edwardus Fowell miles, unus justi-
ciariorum domini Regis, ad pacem in
Com. Devon conservand. assignat.
&c. Vicecomiti ejusdem Com. salutem. Ex
parte dicti domini Regis tibi mando et
præcipio, quod venire facias coram me a-
pud, C. in Com. prædict. vicesimo die Sep-
tembris proximo futuro, 24. probos, suffici-
entes & legales homines de vicineto de C.
prædicto, quorū quilibet habeat quadragint.
solid. terrarum, et Tenement. vel redi-
tum per annum ad minus ultra reprisas, ad
inquirend.

inquirendū super Sacramentum suum pro dicto domino Rege, de quodam ingressu manu forti facto in messuagium cuiusdam, A. B. apud C. prædict contra formam statuti domini Henrici nuper Regis Angliæ sexti, anno Regni tui octavo tento, editi, ut dicitur. Et videas quod super quemlibet Juratorum per te in hac parte impanellendorum viginti solid. de exitibus ad præfatum diem returns; Et hoc nullatenus omittas super poena 20. l. quod noveris te incursum, si in exemptione præmissorum tepidus aut remissus fueris. Et habeas ibi tunc hoc præceptum. Teste me præfat. Edw. Fowell apud F. decimo die Maii, anno Regni domini nostri Caroli, de i gratia Angliæ Scotiæ, Franciæ et Hiberniæ Regis, fidei defensoris, &c. vicelimo.

*The forme of an inquisition
upon a force.*

Inquisition pro domino rege capta apud, C. in Com. Devon, 29. die Iulii, anno Regni domini nostri Caroli, Dei gratia Angliæ Scotiæ Franciæ & Hiberniæ regis, fidei defensoris, &c. Decimo nono per Sacramentum, A. B. C. D. E. F. G. H. I. &c. coram Edw. Fowell milite, uno justiciariorum dicti domini regis ad pacem in dicto Com. conservandam, necnon ad diversas felonias, transgressiones, et alia malefacta in eodem Com. perpetrata audiend. et Terminand. assignatorum. Qui dicunt super Sacramentum suum, quod L. M. de W. prædict. Yeoman, diu, legitime, et pacifice seissitus fuit in dominio tuo, ut de feodo de et in uno messuagio,

messuagio, &c. cum pertinentiis in W. prædict. et possessionem et sesinam suam prædictam continuavit quousque, R. & D. de C. prædict. et alii malefactores ignoti primo die Julii ultimo elapso vi et armis viz cum baculis, gladiis, arcibus et sagittis in messuagium prædictum, &c. intraverunt ac ipsum L. M. inde disseisiverunt & manu forti expulerunt, et eundem L. M. sic disseisitum et expulsum ab eodem messuagio, &c. à prædicto primo die Julii usque ad diem captionis hujus inquisitionis cū hujusmodi fortitudine et potentia armata extra tenuerunt, et adhuc extra tenent in magnam pacis dicti domini Regis perturbationem, ac contra formam Statuti in Parlamento domini Henrici nuper Regis Angliæ sexti, anno Regni sui octavo tento, in tali casu editi et provisī, ubi nullus eorum, nec aliquis alius cujus statum ipsi aut aliquis eorum habuerunt aut habuerunt aliquid in eodem messuagio, &c. aut in aliqua inde parcella habuerunt aut habuerunt infra tres annos proximos ante ingressum suum prædictum, neque alio tempore prædicto ad notitiam juratorum prædicto.

A warrant to the Sheriffe to make restitution, if the Justice will not make it himselve.

EDw. Powell miles unus justitiariorum, &c. Vicecomiti, &c. Cum per quandam inquisitionem patriæ coram me apud W. in Com. prædicto, vicesimo nono die Julii, &c. super Sacramentum R. B. C. D. E. F. G. H. I. &c. ac per formam

formam Statuti de ingressibus manu forti
factis in tali casu provisi, conertum fuit
quod R. et D. et alii, &c. primo die Iulii,
&c. In quodam messuagio, &c. L. D.
In W. predict. vi et armis ingressi sunt ac
ipsam L. D. inde tunc manu forti dis-
seisierunt et expulerunt et predict. L.
D. sic expulsum a predicto Messuagio, &c.
a predicto primo die Iulii, &c. usque ad
diem captionis inquisitionis predict. manu
forti & cum potentia extratenuerunt prout
per inquisitionem predictam plenius li-
quet de recordo. Ideo ex parte dicti do-
mini Regis tibi mando et præcipio quod
(ad hoc debite requisitus) una cum posse
Comitatus tui (si necesse fuerit) acce-
das ad Messuagium et cetera præmissa ac
eadem cum pertinentiis resecisire facias, et
præfatum L. D. ad, et in plenam posses-
sionem suam inde prout ipse ante ingressum
predictum fuerat seisitus restituat et mitti
facias, juxta formam dicti statuti Et hoc
nullatenus omittas periculo incumbente.
Teste. me præfato Edm. Forwell apud
f. &c.

N

A



A Certificate of the presentment, or Verdict of the Jury may be done, and made by the Justice of Peace, by way of a letter; and inclosing therein the said presentment of the Jury, or the said Record of the Justice, Except it be removed by *Certiorari*, and then the forme may be after this manner.

The returne of a *Certiorari* to remove an Indictment may be thus framed.

I. **F**irst, write upon the backside of the writ of *Certiorari*, these or the like words.

Executio istius Brevis patet in quadam scedula huic brevi annexa.

2. And that scedule may be thus;
Ego, Edm. Fowell miles unus custos

dum pacis, ac Iusticiariorum domini Regis ad pacem in Comitatu dicto. conservand. nec non ad diversas telonias &c. assignator. Virtute istius brevis mihi deliberari, indictamentum illud (unde in dicto brevi fit mentio) una cum omnibusidem indictamentum tangentibus in Cancellariam dicti domini Regis d. s. n. et aperte sub sig. llo meo certifice. In cujus rei testimonium ego prefatus Edm. f. his presentibus sigillum meum apposui. Dat. decimo die Augusti An. Regni Caroli, &c.

3. Then take the Record of the indictment, and close it within the Schedule and seal them both up together.

Of Riots.

A Riot is an Assembly of 3. or more persons disorderly coming together to commit some unlawfull act, as to beat a man, or to enter upon his possession, or the like.

The Justice of peace alone cannot punish it, otherwise then by binding them to the good behaviour, and to commit them in case they refuse to give sureties for it.

By the Statute of 13. Hen. 4. cap. 7. two Justices of the Peace and the Sheriff may raise the power of the County to arrest Riots, and to record the Riot upon

upon their true view. And in case the rioters be departed before their coming, then two Justices of the Peace are to enquire thereof within one moneth after, and may heare and determine the same; And if the truth thereof shall not bee found by the enquiry, then the Sheriffe and two Justices of the Peace are to certifie the same before the King and his Councell with all the deeds and circumstances thereof.

All the Kings People are to be assistant to those Justices and Sheriffe, being required upon paine of imprisonment fine and rancome, Statute 2. Hen. 5 cap. 8.

If the same Riot bee not found by reason of maintenance, then the Sheriffe and Justices are to certifie the names of those maintainers, Statute 19. Hen. 7 cap. 13.

If they finde a Riot when they come to the place, they must proceede to punish the Offenders: And this they ought to doe by arrest if they bee present. In the execution of which arrest they may justifie the Beating, Wounding, or Killing of the offenders that shall resist them. And after the Arrest, made, the power of the Countie ought to asse the Sheriffe for conveying of the Rioters to the Gaole, Lamb page 310.

The Arrest thus made, those Ju
Rice

The record of a Riot.

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lices and Sheriffe ought to make Record in writing of that which they see and finde. And this Record ought to be forsmall and certaine atwell for the time and place, as for the number, Weapons, manner and other circumstances, because the Offenders cannot traverle the same, Lamb. 317.

The Record of a Riot.

Memorandum quod primo die Martii, Anno Regni regis domini nostri Caroli dei gratia, &c. decimo nono nos Johannes Bamfelde Baronettus & Willielmus Fyfe. Justiciarii regis nunc ad pacem in Com. prædict. conservandam, Necnon ad diversas felonias, transgressiones et alia malefacta in eodem Com. perpetrata audiend. et terminand. assignati, et Nicholaus Martyn miles ad hunc vicecomes ejusdem Comitatus ad querimoniam, A. B. de C. in Com. prædict. Yeoman in propriis personis nostris accessimus ad domum mansionalem ipsius, A. B. de C. prædict. et ibidem invenimus quosdam, D. E. F. G. H. Et alios malefactores et pacis dicti domini Regis preturbatores ignotos ad numerum octo personarum modo guerrino arraja os, viz. cum baculis, gladiis, arcibus et sagittis riotosè et illegitime aggregatos, et eandem domum sic custodientes

N 3

in

in magnam perturbationem pacis dicti domini Regis, et populi sui terriorem et contra formam Statuti in ea lamento domini Henrici super regis Angliæ quarti, Anno Regni sui decimo tertio, editi. Et ideo nos præfati Johannes Banfield, Willielmus Frye et Nicholaus Marryn corpora prædicti. D. C. J. D. N. ad tunc arrestavimus ac proximæ Gaule dicti domini Regis in Com. prædicti. duci fecimus per Recordum nostrum de transgressione prædicta convictis in præsentia nostra: ibidem moraturos quousque finem dicto domino regi pro transgressione sua prædicta taceant. In cujus rei testimonium huic Recordum nostrum sigilla nostra apposuimus. Dat. apud C. prædicti. die et anno supra dictis.

The

The Mittimus for committing the Rioters to the Goale may be in the forme of the mittimus for a forcible entry as before with very little alteration.

This Record ought to remaine with them, and they and none other Justices shall imprison the Rioters and assesse their fines, Lamb. 317.

But if these Rioters shal escape after these Justices doe come, and see the Riot, then can they neither arrest them at any other time, nor award proccesse against them upon that Record which they make: But the Record must bee sent into the Kings Bench, and from thence proccesse made upon it, and thereupon to bee fined, and they shall not Traverse the Record, Lamb. 218.

If two Justices of Peace (without the Sheriffe) shall see certayne persons in doing a Riot, they may cause them to bee arrested and may make Record of that offence whercof the parties shall bee for ever concluded. Fitz. Justice of the Peace, Fol. r. 7.

But Lambert doubts it, unless it bee in iudiciall place as the Sessions, and so says in the Booke 7. Edw. 4. fol. 18.

Of

Of the enquiry of a Riot.

Albeit these Justices doe not goe to see the Riot, yet they may inquire thereof within the moneth after, and if these Justices doe charge the Jury within the moneth, and doe give day unto them for yielding their presentment after the moneth the Statute is not offended by it, whereby they shall lose 100. l. Lam. p. 223.

The truth of the matter being found thus by enquiry, those Justices have authority by the former Statute, not onely to make out processe against the offenders under their owne Teste, But also to commit them to Prison till they make their fine, and to deliver them after payment of the same, or upon sureties taken for it : Or otherwise to receive their Traverses, and thereupon if the matter will serve to discharge, and dismisse them.

Certificate if the matter bee
not found.

If by this enquiry the Riot be not found either through the perverse maliciousnesse of the Jurors, or by the unlawfull maintenance, or countenance of other men that put themselves into the cause, yet ought there within one moneth after the inquiry

enquiry a Certificate to be made, as well of the names of the principall offenders, and of so much of the fact and circumstances thereof as may by any wayes, or meanes appeare: as also of the names of such maintainers, and of their misdemeanors in this behalf. Lam. 323.

And the Sheriffe must ioyne in this Certificate and bee also present at the enquiry, this Certificate is onely of the nature of a declaration, or Inditement, and may bee traversed.

If two Iustices of the Peace goe, and see a Riot and other two Iustices doe make the enquiry, then the one sort, or the other of them with the Sheriffe or under Sheriffe may make the Certificate, Lamb. 325.

Concerning the penalty
of 100. l.

ND Iustice dwelling out of the County, where the Riot. is can be charged although hee be next to the place.

If any other Iustices (that bee not next to the place) shall execute the Statute, that will excuse these Iustices that be next.

If one or two Iustices of the peace shall come to execute the Statute, and the Sheriffe or under Sheriffe doe not

172 The penalty of the 100 l.

not come at all, yet those Justices shall be excused for their 100 l.

The Justices must send for the Sheriffe, or under Sheriffe and if hee come not, the Justices shall be fined if they arrest not the Rioters, or do not arrest him which without the Sheriffe they are herein by any way authorized to performe. Lam. 127.

Note.

That the parties agreement is no discharge of the inquisition, but the Justices must enquire and make proclamation, if any will inform for the King. Pult. de pace fol. 28. sect. 25.

For the agreement of the parties is no satisfaction to the King for his fine for the peace broken, whereby the parties may be eased of their deserved punishment. Pult. de pac. fol. 29. sect. 125.

In an indictment of Riot the words in terrorem populi seeme to be materiall. Lamb. 178 Brook Riot. 3.

Process

Processe of the Sessions.

1. The usuall processe upon Indictment of Treason, or Felony is
- 1. A Capias.
 - 2. An Alias Capias.
 - 3. An Exigi facias; and in every such Capias there ought to be 3. weeks space betweene the date, and the returne of the writ by Statute 25 Ed 3. cap. 14.
- ◀ If the Inditee be named nuper of another County, the second Capias shall be into that County returnable three moneths after, & proclaimed in that County by Statute. 8. Hen. 6. 16.

2. The common processe in other presentments not being felony nor set forth in Statutes be first

- 1. A Venire facias: and if upon the venire Facias the party be returned sufficient, then a
 - 2. Distringas must goe out, and the same Processe infinite until hee come in.
- ◀ But if a Nihil habet be returned at first against him, then
- 2. A Capias.
 - 3. An Alias Capias.
 - 4. A Pluries Capias.
 - 5. An Exigi Facias.

These Processes may be made
either in the name of the Justice of
Peace, or in the Name of the King
with the Teste of the Justice of
Peace, as in these examples
following.

A Venire Facias.

Devon.

Willielmus Frye armg unus Justiciariorum Domini Regis ad pacem, necnon ad divers. Felonias, Transgressiones, & alia malefacta in Com. prædict. audiend. et terminand. assignatus. Vicecomiti Com. prædict. salutem. Præcipio tibi quod non omittas propter aliquam libertatem, in Balliva tua, quin eam ingrediaris, & venire facias coram me apud **E.** in dict. Com. vicesimo die Junii proxm. futur. **A. B.** de **D.** Yeoman ad respondend. dicto Domino Regi super diversis articulis, super eum præsentatis, & habeas ibi tunc hoc præceptum. Teste me prætato Will. Fry apud Yorty decimo die Junii An. Regis Domini nostri Caroli de gratiâ &c. decimo septimo.

A Distringas.

Devon.

Iohannes Bampfiele Barronetus, unus Justiciariorum Domini Regis ad pacem, necnon ad divers. felonias, transgressiones

ñones & alia malefacta, in Com. prædict. perpetrata audiend. & terminand. assignatus, Vicecomiti Com. prædict. salutem. Præcipio tibi quod non omittas propter aliquam libertatem in Balliva tua, quin eam ingrediaris & distringas, A. B. de C. gen. per omnes terras, &c. Et quod de exitibus eorum respondeas, &c. Ita quod habeas corpus ejus coram me apud D. quinto die Augusti proximo futuro, ad respondend. dicto Domi. Regi super diversis articulis super eum præsentatis, et habeas ibi tunc hoc præceptum. Teste me præfato Johanne B. Hopfelde apud Poltymore primo die Augusti. An. Regni, &c.

Or that may be in the Name of the King as other Riots are, with the Teste of the Justice of Peace thus:

A Capias.

Carolus Dei gratia, Angliæ, Scotiæ, Franciæ et Hiberniæ Rex, fidei defensor, &c. Vicecomiti Devon. salutem. Præcipimus tibi quod non omittas propter aliquam libertatem in Balliva tua, quin eam ingrediaris et capias J. D. de A. in Com. tuo Yeoman, &c. Si inventus fuerit in Balliva tua, et eum salvo custodias (aut custodiri facias) ita quod habeas corpus ejus coram custod. pacis nostræ, nec non justiciarios nostros ad divers. felonias, trans-

176 *An alias and pluries Capias.*

transgressionem et alia malefacta, in eodem
Com. tuo perpetrari. audiend. et terminand.
assignat. apud Castrum Exon. tu Comita-
tu tuo die Martis proxima. post claus. Pasche
ad respondend. nobis de divers. transgred.
contempt et offensis de quibus ipse indi-
ctus Existit. Et habeas ibi tunc hoc breve.
Teste Nicholao Marten milite apud C. sexto
die Julii. An. Regni nostri 18.

The Capias alias runneth in the
same forme with a little altera-
tion, thus.

CArolus Dei gratia, &c. vicecom. &c.
Præcipimus tibi sicut alias tibi præ-
cepimus quod non omittas &c. verba-
tim ut supra.

The pluries Capias is such.

CArolus dei gratia, &c. vicecomiti, &c.
Præcipimus tibi sicut pluries tibi
præcepimus quod non omittas, &c.
et supra.

The forme of the Exigent.

CArolus dei gratia, &c. Vicecomiti
&c. Præcipimus tibi quod exigi fa-
cias, E. D. de A. in Com. tuo
Yeoman, quousque secundum legem et con-
suetudinem Regni Nostri Angliæ utlagetur
non comparuerit, et si compar. tunc eum
Capias

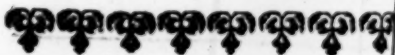
Capias et salvo custodiri facias, quod ita habeas corpus ejus coram Iusticiariis pacis nostræ, necnon Justiciariis nostris ad divers. felonias, transgressiones, et alia malefacta in eodem Com. perpetrata, audiend. et terminand. assignat. ad generalem sessionem pacis (if hee bee indicted at the Sessions) Comitatus tui proxim. post festum sancti Michaelis Archangeliproxim. futuri tenend. ubicunque in eodem comitatu teneri contigerit, ad respondend. nobis de divers. transgr. contempt. et offensis de quibus ipse indictatus existit, et habeas ibi tunc hoc breve. Teste Henrico Walroude arm. apud Brodesfelde. 8. die Septembris Anno Regni Nostri. 19.

FINIS.



Errata.

PAge 16. l. 30. for the made
(read) that, and l. 31. for the
made of (read) to. p. 56. l. five
should be l. nine. and l. nine
should be l. 5. pag. 66. l. 12. 15.
blot out s. and r. evitable and
inevitable.





made
for the
five
nine
. 15.
and

